Mr. Northridge

SELECTIONS

FROM THE

LAWS

OF

ENGLAND;

CONTAINING

DISTINCT AND FAMILIAR TREATISES

UPON SUCH

HEADS AND DIVISIONS

OF THE

LAW,

AS ARE OF MOST GENERAL USE AND IMPORTANCE.

VIZ.

I. The Laws respecting Landlords, Tenants, and Lodgers.

II. The Laws respecting Wills, Testaments, and Codicils, and Executors and Administrators.

III. The Laws respecting Masters and Servants, Articled Clerks, Journeymen, and Manufacturers.

IV. The Laws respecting Parish Affairs, viz. the Offices of Churchwardens, Overseers, Constables, &c.

LONDON:

PRINTED FOR W. CLARKE AND SON, PORTUGAL-STREET, LINCOLN'S-INN.

(1)

THE

LAWS

RESPECTING

LANDLORDS, TENANTS,

AND

LODGERS,

Laid down in a *plain, eaſy* and *familiar* Manner;

Together with

PRACTICAL DIRECTIONS

CONCERNING

LEASES,	COVENANTS,
ASSIGNMENTS,	REPAIRS,
SURRENDERS,	WASTE,
AGREEMENTS,	FIRE, &c.

Demand and *Payment of* RENT, DISTRESS, and EJECTMENT;

As collected from the ſeveral

REPORTS AND OTHER BOOKS OF AUTHORITY,

Up to the PRESENT TIME.

To which are alſo added,

CAUTIONS and DIRECTIONS relative to the HIRING and LETTING of HOUSES and APARTMENTS.

ALSO

DISTINCT TREATISES

On the various Kinds of Eſtates,

PARTICULARLY

ESTATES for LIFE, for YEARS, and COPYHOLD ESTATES.

WITH

AN APPENDIX OF PRECEDENTS,

Compriſing a great Variety of the moſt approved Forms of

LEASES, ASSIGNMENTS, SURRENDERS, COVENANTS, NOTICES TO QUIT, RECEIPTS FOR RENT, AND PRECEDENTS IN DISTRESS.

To which is likewiſe now affixed, for the Aſſiſtance of the unprofeſſional Reader,

A DICTIONARY OF LAW TERMS,

EXPLAINING THE IMPORT OF SUCH TECHNICAL WORDS AND PHRASES AS OCCUR IN THE WORK.

THE FOURTH EDITION, REVISED, ENLARGED AND IMPROVED,

By JAMES BARRY BIRD, *of New Inn, Eſq.*

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LAWS

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REPORTS AND OTHER BOOKS OF AUTHORITY,

Up to the PRESENT TIME.

ALSO

DISTINCT TREATISES

On the various Kinds of Estate,

RESTRICTED AS REGARDS

ESTATES for LIFE, for YEARS, and COPYHOLD ESTATES.

WITH

AN APPENDIX OF PRECEDENTS,

LONDON:

PREFACE.

THE Laws reſpecting Landlords and Tenants, as was juſtly obſerved by the Editor of the former Editions of the preſent work, compoſe ſo extenſive a diviſion of the Engliſh code, that there can hardly be an individual in the nation, however elevated or mean his condition, who is not eſſentially intereſted in ſome or other of the numerous objects they embrace. This univerſal relation has from time to time, as might have been expected, given riſe to various compilations, profeſſing, ſome to compreſs, ſome to amplify, and ſome to familiarize a ſubject acknowledged to be ſo generally uſeful and important; but of thoſe which have yet appeared, none ſeems to have united the many eſſential qualifications to a work of this ſort with ſo much ſucceſs, as the preſent. The arrangement is perſpicuous, the matter judicious, and the compoſition well adapted to the uſe of thoſe who are moſt likely to ſtand in need of ſuch an aſſiſtant; and, indeed, from the rapidity of the ſale of the former impreſſions, a ſimilar opinion ſeems to have prevailed with the public.

THE intrinsic merit of the performance, together with the favourable reception with which it has been received, induced me, at the request of the Publisher, to submit it to such a revisal, preparatory to the third impression, as might make it still more perfect; and acceptable, not only to the public at large, but also to the unprofessional reader. And from the additions which it has now received, I believe myself justified in asserting, that no material decision is omitted, which would tend to elucidate the subject, or may be necessary for the reader's information: but in this, from the multitude of my other engagements, I may possibly have deceived myself: I trust, however, that should any omission, or other inaccuracy have escaped me, my endeavours to benefit the public, by presenting them with an improved edition of so necessary a Compendium, will insure me their indulgence, if I fail to merit their applause.

NEW-INN,
Michaelmas Term, 1796.

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An Explanation of the Contractions made uſe of in this Work.

Amb.	Ambler's Reports.	Inſt.	Coke's Inſtitutes.
And.	Anderſon's Reports.	Leo.	Leonard's Reports.
Atk.	Atkyn's Reports.	Lev.	Levinz's Reports.
Bac. Ab.	Bacon's Abridgement.	Lil. Conv.	Lilly's Conveyancer.
Black. Com.	Blackſtone's Commentaries.	Lit.	Littleton's Tenures
		Lutw.	Lutwick's Reports.
Bro. or Brow.	Brown's Chancery Caſes.	Mod.	Modern Reports.
Bro. Diſt.	Brooke's Abridgement, Title, Diſtreſs.	Moor.	Moor's Reports.
		Noy Max.	Noy's Maxims of the Laws of England. 6th edition.
Bur.	Burrow's Reports.		
Co.	Coke's Reports.		
Co. Cop.	Coke's Copyholder.	Ow.	Owen's Reports.
Co. Lit.	Coke upon Littleton, 8vo. edition.	P.	Page.
		Peak. Ca.	Peake's Caſes.
Cow.	Cowper's Reports.	Perk.	Perkins' profitable Book.
Cro. Eliz.	Croke's Reports in the time of Elizabeth.	Plow.	Plowden's Commentaries.
		P. Wil.	Peere Williams' Reports.
Cro. Jac.	Croke's Reports in the time of James I.	Raym.	Raymond's Reports.
		Roll. Ab.	Roll's Abridgement.
Cro. Car.	Croke's Reports in the time of Charles I.	Salk.	Salkeld's Reports.
		Show.	Showers' Reports.
Doug.	Douglas's Reports.	Sty.	Styles' Reports.
Dy. or Dyer.	Dyer's Reports.	Term Rep.	Term Reports by Durnford and Eaſt.
Diſt.	Diſtreſs.		
Eſp.	Eſpinaſſe's Law of Niſi Prius.	Vaugh.	Vaughan's Reports.
		Vent.	Ventris's Reports.
Eſp.	Eſpinaſſe's Caſes.	Vez.	Vezey's Reports.
Fonb. Tr. Eq.	Fonblanque's Edition of Treatiſe of Equity.	Vid.	See.
		Wilſ.	Wilſon's Reports.
Gilb.	Gilbert's Reports.		
Hob.	Hobart's Reports.		

Explanation of LAW-TERMS *made uſe of in the following Treatiſe.*

Agiſtment——THE feeding or depaſturing of other perſon's cattle at a certain price per week.

Alien——A perſon born out of the King's dominions.

Ante——Before

Amenable——Anſwerable in a court of juſtice.

Apportion——To divide a thing amongſt thoſe who are by law entitled to it.

Approve——This word is applied to commons and waſte grounds, to approve which, is to incloſe, or otherwiſe appropriate them to the uſe of the owner of the ſoil, leaving ſufficient for the cattle of the commoners.

Appurtenances——Are all ſuch things as in any wiſe belong to the thing demiſed.

Aſſignment——Defined, or explained, p. 28.

Aſſignor——Is he who aſſigns or makes over property to another.

Aſſignee——Is he to whom an aſſignment of property is made.

Aſſumpſit——Is a ſpecies of action at law, uſed for the recovery of damages for the breach of any promiſe or undertaking.

Attornment——Is a formal or expreſs acknowledgment by a tenant, that another is his lawful landlord

Avowing——Is an acknowledgment and juſtification of taking a diſtreſs.

Baron——An old word, ſignifying huſband.

Cart-bote——See *Eſtovers*.

Ceſtui-que-truſt, & Ceſtui-que-uſe——Are thoſe for whoſe uſe or benefit an eſtate is holden by another.

Clauſe——Defined, p. 15.

Contract——Means a bargain or agreement in reſpect to any thing.

Copyhold——Defined, p. 39.

Coparceners——Are thoſe to whom lands deſcend from the ſame anceſtor.

Covenant——Defined, p. 15.

Deed——Is a writing ſealed and delivered by the parties.

Dele——Leave out.

Diſtreſs——Defined, p. 63.

Denizen——Is one who though born an alien, is allowed, by letters patent, the privilege of purchaſing and holding land.

Dower——Is the third part of a man's real eſtate, which on his death deſcends to his wife for life.

Ejectment——Defined, p. 76.

Emblements——Are ſuch part of the produce of land, &c. as ariſe after the expiration of a tenant's term. See p. 5.

Eſtovers——Are a reaſonable quantity of wood allowed by law to a tenant to enable him to keep in repair the premiſes demiſed to him; to make carts, ploughs, and other inſtruments of huſbandry; and for firing——theſe allowances are termed *botes*, and diſtinguiſhed by the names of *houſe-bote*, *fire-bote*, *cart-bote*, and *plough-bote*.

Fee-ſimple——Defined, p. 2.

Feme Covert——A married woman.

Feoffment——A ſpecies of deed by which lands are conveyed and immediate poſſeſſion thereof given.

Fine——A ſpecies of aſſurance by which a married woman is permitted to convey an eſtate——uſed alſo for other ſpecial purpoſes.

Gavel-kind——A cuſtom in ſome parts of England by which land deſcends to all the ſons equally, and not to the eldeſt only, as by the common law.

Glebe——The land to which the parſon or rector of the pariſh is entitled in right of his church.

Grantor——A perſon who conveys any thing to another by means of a deed of grant.

Grantee——A perſon to whom a grant is made.

Hereditaments——Signifies any thing to which a perſon may inherit or be heir.

Heriot——Is the beſt beaſt or other chattel due to the Lord on the death of a copyholder.

Houſe-bote & Hedge-bote——See *Eſtovers.*

Idiot——A perſon void of reaſon.

In eſſe——In being or exiſtence.

Infant——A perſon under the age of 21 years.

Inheritance——The heirſhip, or fee ſimple.

Joint-tenant——Defined, p. 49.

Jointure——A proviſion ſettled on a wife in lieu of dower.

Incidents——Properties or qualities which belong to, and are inſeparable from a thing

Levant & Couchant——Words uſed in law to ſignify the lying down to reſt, and riſing up again to feed of cattle.

Leſſor——A perſon who demiſes land, &c. to another; a landlord.

Leſſee——A perſon to whom land &c. is let upon leaſe; a tenant.

Mortgage——Land is ſaid to be in mortgage when it is pledged for the payment of a ſum of money

Nomine pœnæ——Is a penalty ſtipulated to be forfeited in caſe of the breach of any covenant or agreement.

Ouſt——To ouſt, is to turn out of poſſeſſion,

Parceners——Defined, p. 50.

Poſt——After.

Proviſo——Defined, p. 15.

Plough-bote——See *Eſtovers.*

Remainder——That portion of an eſtate which remains after a certain part of it is granted away.

Reverſion——That portion of an eſtate which reverts back to the grantor after the grant is at an end

Replevy——To replevy goods taken in diſtreſs, is to reclaim them on giving ſecurity to try the lawfulneſs of ſuch diſtreſs, and to reſtore them if lawful.

Supra——Above

Surrender——Defined, p. 28.

Tail——Defined, p. 3.

Tenement——Any thing which may be holden or poſſeſſed by a perſon.

Truſtee——One who holds an eſtate for the uſe of another.

Waſte——Defined, p. 32.

ERRATA.

Page 4, laſt line but one, for "would" read "ſhould."
78, for "claims" read "clauſes."
79, for "receipt" read "receipts."

THE LAWS OF LANDLORD AND TENANT.

CHAP. I.

OF ESTATES IN GENERAL.

AN *eſtate* is that *intereſt* which a perſon has in lands, or tenements; this by the laws of England may be various: it may be for a certain number of years, months, or days; it may be for a man's own life, or the life of another perſon; it may determine at his deceaſe, or remain to his deſcendants after him; or, laſtly, it may be abſolute and unlimited, being veſted in him and his repreſentatives for ever. In technical language, theſe different eſtates are denominated as follows: *eſtates in fee-ſimple*; and *fee-tail*, which are freeholds of inheritance; *eſtates for life; after poſſibility of iſſue extinct; by the curteſy*; *in dower*; and *in jointure*, which are eſtates of freehold, but not of inheritance; *eſtates for years*; *at will*; and *at ſufferance*, which are neither of freehold nor of inheritance; *eſtates by copy of court-roll*, ſome of which are, and ſome are not, of inheritance; *eſtates in joint-tenancy*; *in common*; and *in coparcenary*, which may be had in any of the preceding eſtates. Concerning each of theſe, we ſhall ſpeak in the order we have here enumerated them, being more or leſs diffuſe in our obſervations, as they may ſeverally appear to have greater or leſs relation to the ſubject of *Landlord and Tenant*.

An eſtate, what.

The various kinds of eſtates.

CHAP. II.

OF ESTATES OF INHERITANCE;

AND

I. *Of an Eſtate in Fee-Simple.*

An eſtate in fee-ſimple.

AN eſtate in fee-ſimple is where a man has lands, tenements, or hereditaments, to hold to him and his heirs for ever, (viz. to have the *uſe* and take the *profits* thereof to him and his heirs, for the *abſolute property of the ſoil* can belong to no *ſubject*, but always reſides in the king). This eſtate may be had in any kind of hereditaments, corporeal, or incorporeal, as lands, houſes, advowſons, tythes, &c. and is the higheſt and moſt extenſive intereſt a man can poſſeſs in any property. It may be granted and diſpoſed of either by deed or will, at the owner's pleaſure; and if he make no diſpoſition of it in his life-time, it will, on his death, deſcend to his heirs of the whole blood, that is, to his lineal deſcendants. All the inferior eſtates of which we ſhall have occaſion to treat in the enſuing pages, are derived out of, and compoſe a part of this: an eſtate for life or years, for inſtance, is only a certain portion of the eſtate of him who has the *fee*, to whom, on the death or other determination of the eſtate of the preſent poſſeſſor, it will revert to be held again in fee-ſimple. Eſtates in fee are ſubject to the dower of the wife, chargeable with debts of record, and may be forfeited for treaſon. *Co. Lit.* § 1. *Noy Max.* 6th *edit.* *p.* 43.

In what it may be had.

Its incidents.

II. *Of a baſe or qualified Fee.*

A baſe fee.

A baſe, or qualified fee, is that which has a qualification annexed to it, by which it will determine whenever the qualification is at an end; as where Hen. 6. granted to John Talbot, that he and his heirs, *lords of the manor of Kingſton Liſle*, ſhould be peers of the realm: here J. Talbot had a baſe, or qualified fee, in that dignity, which determined the inſtant he or his heirs ceaſed to be lords of the ſaid manor. This eſtate is reckoned a fee, becauſe by poſſibility it may endure for ever; but, as it at the ſame

time depends upon concurrent and collateral circumſtances, which debaſe the purity of the fee, it is called a baſe, or qualified fee. *Co. Lit.* 27. a. 2 *Black. Com.* 109.

III. *Of a Conditional Fee.*

A conditional fee was, at the common law, a fee reſtrained to ſome particular heirs, excluſive of others, as to the heirs of a man's *body*, which admitted only his lineal deſcendants. This eſtate was nearly extinguiſhed by the ſtat. 13 Ed. 1. *c.* 1. commonly called the ſtatute de donis, which gave riſe to the modern eſtate tail. *Co. Lit.* 19. a. A fee conditional.

IV. *Of an Eſtate-Tail.*

An eſtate-tail may be either general or ſpecial; general, where lands and tenements are reſtrained to the heirs of a man's body generally; ſpecial, where they are reſtrained to ſome *particular* heirs of his body, as to the heirs of his body by his wife *Mary*, &c. Eſtate-tail.

The principal incidents to a tenancy in tail are theſe: 1. a tenant in tail may commit *waſte* on the eſtate-tail by ſelling timber, pulling down houſes, or the like, without being liable to account for the ſame. 2. The wife of a tenant in tail ſhall have her dower or thirds of the eſtate-tail. 3. The huſband of a female tenant in tail may be tenant by the curteſy of the eſtate-tail. 4. A tenant in tail may, by ſtat. 32 Hen. 8. *c.* 28, (under certain reſtrictions there mentioned) grant leaſes of the eſtate-tail for the term of 3 lives, or 21 years. 5. An eſtate-tail may be barred or deſtroyed by a fine, or a common recovery, or by lineal warranty, deſcending with aſſets to the heir, or by committing treaſon. *Co. Lit.* 19. b. 224. a. Its incidents.

The reader perceives, that we have been exceedingly conciſe in our remarks on the eſtates mentioned in this chapter; they have, in truth, been noticed only for the ſake of method; for when conſidered under the particular denominations here enumerated, they in no reſpect concern the relation between landlord and tenant, both thoſe capacities being then concentrated in the ſame perſon; but immediately on their being granted out by their owners to inferior tenants, they become intimately connected with our ſubject, and will therefore meet with a full diſcuſſion under one or other of the enſuing heads. Obſervations.

CHAP. III.

OF ESTATES OF FREEHOLD, BUT NOT OF INHERITANCE;

AND

I. *Of an Eſtate for Life.*

An eſtate for life.

AN eſtate for life is where a man has lands or tenements to hold during his own life, or the life of ſome other perſon, or for ſome other uncertain period, which by poſſibility may continue for life. *Co. Lit.* 41. b.

As this eſtate under one or other of the above definitions is by far more frequent amongſt thoſe for whom we have adapted the preſent treatiſe than either of thoſe we have before noticed, we ſhall be ſomewhat more particular in our remarks upon it, and conſider briefly, 1. How it may be created. 2. What are its incidents; and, 3. How it may be deſtroyed.

1. How created.

Eſtates for life may be created not only by a grant to a perſon expreſsly for life, but alſo by a general grant, without defining or limiting any ſpecific eſtate, as, if I grant "to Philip Downing my houſe at Hampſtead." This makes him tenant for life; for though it cannot be a fee for want of the word *heirs*, it ſhall be conſtrued to be as large an eſtate as the words of the donation will bear, and therefore an eſtate for life. *Co. Lit.* 42. a.

It may be proper to remark here, that in order to create a valid eſtate for life, it is material that it be made to commence on the ſame day upon which it is granted; for at common law no eſtate of freehold can be created without actual poſſeſſion being given of the thing granted. A leaſe for life, therefore, to begin at *Michaelmas next*, would be void, for poſſeſſion cannot be given *now*, of an eſtate which is not to commence till a *future* period. 5 *Co.* 94.

To preſerve this requiſite, ſome attention is neceſſary in the wording of a leaſe for life. If it be made to commence "*from* the day of the date," (which has too frequently been done) the day on which it is dated will be excluded, and the leaſe conſequently void. *Loft. Rep.* 296. It would therefore be made to commence "from henceforth," "from the making hereof," or the like,

which expreſſions include the day of making. *Co. Lit.* 45. 1 *Wilſ.* 176.

It has, however, been held that a leaſe, under a *power* in a marriage ſettlement to grant leaſes in *poſſeſſion*, and not in *reverſion*, is good, though made to begin "from the day of the date." *Doug.* 53. 565. *Cowp.* 711. This deciſion proceeded on the principle of effectuating the intention of the parties, and to ſubſtantiate ſo neceſſary a proviſion in marriage ſettlements.

2. Its incidents.

The incidents to an eſtate for life are principally the following: A tenant for life has a right to the full uſe and enjoyment of his eſtate, and of all profits or advantages which may ariſe from it, ſuch only excepted as, if taken, would be to the permanent loſs of the perſon entitled to the reverſion: he may, therefore, unleſs reſtrained by particular covenants, as may alſo his leſſee, or undertenant, take houſe-bote, cart-bote, and hay-bote, *viz.* ſufficient wood from off the eſtate for the neceſſary purpoſes of *repairs*, *firing*, and *implements of huſbandry*, without any expreſs aſſignment thereof in his leaſe; he has alſo a right to the pollards, and dotards, and to the plaſhings of quicks and coppice wood, (but he muſt be careful to fence in the ſtocks, ſo that the growing ſhoots be not deſtroyed by cattle,) but he is not at liberty to cut down timber trees, pull down houſes, or commit other *waſte* upon the premiſes, for the deſtruction of ſuch things would tend to impoveriſh the eſtate of the reverſioner; and they are moreover neither the temporary profits of the land, nor neceſſary for the complete enjoyment of the eſtate. *Co. Lit.* 53. b. 4 *Co.* 63. a.

Tenant for life has a right to the full enjoyment of his eſtates.

May take eſtovers.

Muſt not commit waſte.

The law will not ſuffer a tenant for life to be prejudiced by any ſuch ſudden or caſual determination of his eſtate as he could not foreſee or prevent.

Not prejudiced by accidents.

Therefore, if tenant for life ſow his land, and die before the corn, &c. be ripe, though his eſtate be determined, yet ſhall his executors have the crop and other *emblements*; for to ſow the land was a public benefit, tending to the increaſe and plenty of proviſions, and ought to have the utmoſt encouragement. *Noy Max.* c. 9. Emblements are not only corn and other grain ſown, but alſo roots planted, and in general, all *annual*, *artificial profits* of the land; but *fruit trees*, *graſs*, and the like, are not reckoned emblements, becauſe not planted annually, at the expence and labour of the tenant; but being a *natural* and *permanent* profit of the earth. 2 *Black. Com.* 122.

Shall therefore have emblements in ſome caſes;

And ſo it is if the eſtate of tenant for life be determined by the act of law, for "the law worketh not injury."

Therefore, if an eſtate be granted to a man and woman during coverture, (which would give them a determinable eſtate for life) and they be divorced, ſtill the huſband ſhall have the corn, &c. previouſly ſown; for the ſentence of divorce was the act of law. 5 *Co.* 116.

but not in all, But it would be otherwiſe if the eſtate were determined by the wilful act of the parties themſelves.

As if tenant for life forfeit his eſtate by committing waſte, granting his eſtate in fee, &c. in theſe and ſimilar caſes, he ſhall loſe the emblements, and muſt leave upon the premiſes whatever may be growing at the time of its determination; and indeed what right can he claim to that which he has voluntarily relinquiſhed? *Co. Lit.* 55. a.

As to his leſſees. Another incident to eſtates for life, regards the leſſees, or undertenants, to whom the law is equally favourable as to their leſſors, the original tenants for life, and in ſome caſes more ſo, for they are not only entitled to eſtovers and emblements, as the original tenant for life is, but in ſome caſes where the original tenant ſhall not have them on account of having determined his eſtate by his own act, yet his leſſee ſhall, who is a third perſon, and ought not to be hurt by the default of his leſſor. *Ibid. Cro. Eliz.* 461.

As, if a woman hold lands during celibacy, and marry, this being her own act, ſhe ſhall loſe her emblements; but if ſhe have leaſed her eſtate to an undertenant, her marriage will not deprive him, becauſe he was a ſtranger to the act, or if otherwiſe could not have prevented it. 1 *Rol. Ab.* 727.

Executors &c. may recover rent of leſſees after tenant for life's death. And until the laſt reign, a leſſee of tenant for life, in caſe of the death of his leſſor, between the quarter-days appointed for rendering his rent, might lawfully quit the premiſes without paying any ſince the laſt quarter-day; but this unreaſonable privilege was remedied by 11 *Geo.* 2. *c.* 19. which enacts, that the executors or adminiſtrators of tenant for life, ſhall recover of the leſſee a rateable proportion of rent from the laſt day of payment to the death of the leſſor.

Action of debt may be had for rent. It may here alſo be obſerved, that at the common law there was no other mode of recovering rent due from tenant for life than by diſtreſs; but now by ſtat. 8 An. *c.* 14. any perſon having rent in arrear, due, on leaſe for life or lives, may have action of debt for the ſame as if due upon leaſe for years.

We now proceed to consider the means by which an estate for life may be determined or destroyed. 3. How an estate for life may be destroyed.

Though estates for life will, generally speaking, last as long as the life for which they are granted continues, yet there are some estates for life which may determine sooner.

Thus, if a lease be made to a woman during her widowhood, or to a man till he be promoted to a benefice, these estates are absolutely determined on the marriage of the woman, or the man's obtaining a benefice; yet whilst they subsist they are reckoned estates for life, because the term of their continuance being uncertain, they may by possibility last for life, viz. if the contingencies on which they are to determine do not sooner happen. 3 *Co.* 20. 2 *Black. Com.* 121. By breach of condition.

And so a lease for years, executed by tenant for life, is void on his death, though the reversioner be made a party to it, and afterwards execute in order to confirm it. 1 *Term Rep.* 86.

An estate for life will also determine by the commission of any legal act of forfeiture; as by committing waste: granting a greater interest than the tenant is possessed of; or, in short, the doing any act which is inconsistent with the *nature* of this estate; what these are will be more particularly stated hereafter. Chap. 4. §. 5. tit. *Forfeiture.* By forfeiture.

We shall probably meet with no more convenient place than this to mention, that, "By 29 Car. 2. *c.* 6. it is enacted, that if tenant for life shall remain beyond sea, or elsewhere absent himself for seven years together, and no sufficient proof be made of his being living, he shall in any action brought by the lessee, or reversioner, be accounted dead." But by the same act it is provided, that, if he afterwards return, or appear to be living, he shall recover the intervening profits of the land with interest for the same. Tenant for life absent for 7 years, shall be presumed to be dead.

Concerning the mode of demanding and recovering rent in arrear, together with such other incidents and properties of an estate for life as it has in common with an estate for years, see post. chap. iv. & viii.

II. *Of an Estate-Tail, after Possibility of Issue extinct.*

This appellation is given to the estate of one who being tenant in special tail, (that is, to hold to him and his heirs An estate-tail after possibility of issue extinct.

by ſome particular woman,) the perſon from whoſe body the iſſue was to ſpring dies without iſſue, or having iſſue, ſuch iſſue becomes extinct. *Co. Lit.* 27. b.

III. *An Eſtate by the Curteſy of England.*

An eſtate by the curteſy of England.

This happens when a man marries a woman ſeized of an eſtate of inheritance, and has by her iſſue born alive and capable of inheriting the eſtate, and ſhe dies, the huſband is then entitled to the eſtate as tenant by the curteſy of England. To entitle a man to be tenant by the curteſy, the marriage muſt be legal; the wife muſt have been actually in poſſeſſion of the lands, and the iſſue muſt be born alive. 2 *Black. Com.* 145.

IV. *Of an Eſtate in Dower.*

An eſtate in dower.

Which is, where a huſband being ſeized of an eſtate of inheritance dies, leaving his wife ſurviving. In this caſe ſhe ſhall have, during her life, a third part of all lands and tenements of which her huſband was ſo ſeized at any time during their marriage. A woman will forfeit her dower by aliening the lands aſſigned to her; by divorce; by elopement; by the treaſon of her huſband; and may bar it by levying a fine, or ſuffering a recovery during her coverture. *Lit.* § 36.

V. *Of an Eſtate in Jointure.*

Jointure.

A jointure is defined by Sir Edw. Coke to be a competent livelihood of freehold for the wife, of lands and tenements, to take effect in profit or poſſeſſion immediately on the death of her huſband. To conſtitute a good jointure, it muſt be for her own life; it muſt be made to herſelf and not another, in truſt for her; it muſt be, and ſo expreſſed to be, in lieu of dower. If the jointure be ſettled before marriage, the obſervance of theſe requiſites will prevent her claiming her dower; but if not till after marriage, ſhe may notwithſtanding refuſe the jointure, and take her dower at common law. *Co. Lit.* 36. b.

Obſervation.

Theſe eſtates of *tenant in tail after poſſibility of iſſue extinct*, *Tenant by the curteſy*, *Tenant in dower*, *and Tenant in jointure*, are equivalent to the eſtate for life, which we recently ſpoke of, and partake in general of the ſame privileges and diſabilities as that eſtate; we ſhall therefore ſay no-

thing farther concerning them at preſent; particularly as they have but little relation to our general ſubject, and will occaſionally be noticed in ſome of the ſubſequent chapters.

CHAP. IV.

OF ESTATES LESS THAN FREEHOLD;

AND

I. *Of an Eſtate for Years.*

An eſtate for years defined.

AN eſtate for years may be defined to be a contract or agreement between the leſſor, (i. e. the perſon making the leaſe) and the leſſee, (the perſon to whom it is made); for the poſſeſſion and profits of lands and tenements on the one ſide, and a rent or recompence to be paid on the other, for ſome determinate period. 2 *Bac. Ab. Tit.* "*Leaſes.*" 2 *Black. Com.* 140. and every eſtate which muſt neceſſarily expire at a certain and prefixed period, by whatever words created, is in law conſtrued to be an eſtate for years; for which reaſon it is frequently called a *term*, from the Latin word *terminus*, becauſe its duration or continuance is bounded and determined; and it is immaterial whether it be for the complete term of a year, or for a longer or ſhorter period; for though it be but for half a year, or a quarter, or any leſs time, it is ſtill reſpected as an eſtate for years, 2 *Black. Com.* 140.

This being the eſtate to which we have ſo frequently referred in the preceding part of our work, and to which, on account of its great frequency, (and more eſpecially amongſt thoſe for whoſe information and uſe the preſent volume is principally deſigned) we have promiſed to give our particular attention, we ſhall conſider it in five points of view, and enquire,

1. Who may grant an eſtate for years, or in other words, who are enabled to make a good leaſe for years.
2. What requiſites are to be obſerved in order to conſtitute a valid leaſe.
3. Of covenants, proviſoes, clauſes, and agreements in leaſes for years.

4. The intereſt a leſſee for years has in the premiſes demiſed to him; with ſome other miſcellaneous incidents to his eſtate.
5. By what means an eſtate for years may be barred or determined; and,
6. Of the nature and effect of agreements, whether for leaſes or other transfer of premiſes.

And firſt, *concerning who may grant an Eſtate for Years.*

Who may grant leaſes.

It may be ſaid in general, that all perſons ſeized in fee-ſimple, fee-tail, for term of life, or years, of lands or tenements, may grant *leaſes* thereof for any term *leſs* than their own reſpective intereſts. It is not here meant that they are reſtrained from granting their *whole* intereſt; only in that caſe the conveyance loſes the name of *leaſe*, and is denominated an *aſſignment*.

Tenants in fee.

Tenant in fee-ſimple having an abſolute and unlimited intereſt in his eſtate, may conſequently grant leaſes of all or any part thereof, for life or years, or otherwiſe, at his pleaſure, without limitation or reſtraint.

Tenants in tail.

Tenant in tail, by ſtat. 32 Hen. 8. may, as before obſerved, grant leaſes of his eſtate-tail for 3 lives or 21 years, to commence from the making, or ſome ſhort time after, ſo that it be of lands or tenements uſually let to farm for 21 years paſt, and ſo that the accuſtomed yearly rent paid within that period be reſerved; the intent of which ſtatute is, that the tenant in poſſeſſion may not incumber or diminiſh the value of the eſtate to the perſon entitled in reverſion.

But it is to be obſerved, that though it ſhould be made for a longer period, it will be good during that for which it might lawfully have been granted. 1 *Anſtr.* 77.

Tenants for life, &c.

Tenants for life, by the curteſy, and in dower, may grant leaſes of their eſtate, for their own lives, or the life of the perſon on whoſe death their eſtate will determine, but no longer; which reſtriction is for reaſons ſimilar to that laſt mentioned.

Huſbands in right of their wives.

Huſbands ſeized of lands, &c. in right of their wives, are authorized by the ſame ſtat. of 32 Hen. 8. to make leaſes thereof for any term not exceeding 21 years, or three lives in being, to commence from the making, in which, however, the wife muſt join, and the ſame requiſites be obſerved, and for ſimilar reaſons, as in leaſes made by tenant in tail. *Co. Lit.* 45. b.

But it has been determined, that though the directions of the ſtatute are not ſtrictly complied with in theſe reſpects, the demiſe is not abſolutely void, but voidable only by the entry of the remainder-man. *Doug.* 53. & *ante*, p. 5.

Joint-tenants, tenants in common and coparcenary, may make leaſes for life or years, or at will, of their own reſpective parts, which, at their death, will bind their companions. *Wood Inſt.* 267. Joint-tenants, tenants in common, and coparcenary.

Executors and adminiſtrators having terms for years veſted in them, in right of their teſtators or inteſtates, may make leaſes thereof for any ſhorter period than their whole term, and the rent reſerved will be aſſets in their hands, and go in a courſe of adminiſtration. 6 *Co.* 63 b. Executors and adminiſtrators.

Eccleſiaſtical perſons and eleemoſynary corporations, may alſo by the aforeſaid ſtat. 32 Hen. 8. make leaſes under the following reſtrictions, viz. they muſt not exceed 21 years, or 3 lives, from the making. The accuſtomed rent muſt be reſerved, and the old leaſe, if one in being, muſt be within 3 years of expiring; and leaſes ſo made will bind their ſucceſſors. Eccleſiaſtical perſons.

But a leaſe by a *corporation aggregate*, though not conformable to the ſtatutes, will be valid as long as the perſon lives who was at the head of the corporation when it was made. *Co. Lit.* 45. a. *Bac. Ab.* "Leaſes."

Guardians of infants, (whether appointed by law, or by will, or choſen by the infant himſelf), may make leaſes of the infants' lands for any number of years not extending beyond the term of his minority. *Co. Lit.* 88. *Vaugh.* 18. 179. If however they be made to continue beyond the infant's minority, they are not abſolutely void, but voidable only at the infant's option. *Cro. Jac.* 55. 98.—Theſe leaſes may be made in the guardian's own name. Guardians.

Having ſeen who may, it will be proper for us to conſider ſhortly who may not grant leaſes. Who not.

The reſtrictions under which tenants in tail, eccleſiaſtical perſons, and huſbands in right of their wives, are permitted to grant them, have already been ſtated.

And it may here be added, that mortgagors cannot otherwiſe than ſubject to the mortgage, grant leaſes of the lands, &c. which they have mortgaged, unleſs the mortgagee be made privy to it. *Doug.* 21. Mortgagors.

Infants alſo are in general diſabled from making leaſes of their eſtates, ſo as to bind them when they come of

age; leſt from ignorance, or by the arts of deſigning men, they ſhould be led to demiſe their eſtates for leſs than their real value, (except, indeed, in the caſe of the king, who in law is never deemed to want diſcretion.) *Dy.* 209.

But by the cuſtom of ſome places, infants may grant leaſes at the age of 15 years, which ſhall bind them after they become of age. *Co. Lit.* 45.

Married women are alſo incapable of making a valid leaſe, (unleſs the power of making leaſes is expreſsly reſerved to them on their marriage) becauſe they are ſuppoſed to be under the controul of their huſband, who might compel them to grant their eſtate contrary to their real intereſt or inclination.

Aliens, (that is to ſay) perſons born out of the kingdoms of England, Scotland, or Ireland, (and not being naturalized) are by ſtat. 32 Hen. 8. *c.* 16. rendered incapable of holding land or houſes therein, they are conſequently incapable of granting ſuch as they may happen to be kindly permitted to occupy.

2. *The Requiſites to conſtitute a valid Leaſe for Years.*

2. Requiſites for a good leaſe.

It ſeems needleſs to ſay that in order to make a good leaſe, there muſt be a *leſſor* who is in law able to grant the *leaſe*—a *leſſee* capable of taking the thing leaſed—and a ſufficient deſcription of the eſtate demiſed. After which the firſt requiſite to the validity of a leaſe, and indeed of any other deed, is, that the parties be perfectly free from reſtraint; for if it be made or accepted from compulſion, as for fear of impriſonment or the like, it will be void. 2 *Black. Com.* 292.

Muſt be in writing.

It is alſo neceſſary that the leaſe be made in writing, and not by parol; for, by ſtat. 29 Car. 2. *c.* 3. made for the prevention of frauds, it is enacted, that "all leaſes, intereſts of freeholds, or *terms of years*, of any uncertain intereſts, of, in, to, or out of any meſſuages, lands, tenements, &c. not put into writing and ſigned by the parties creating or making the ſame, ſhall have the force and effect of eſtates at will only, and ſhall not, either at law, or in equity, be taken to have any greater effect; except only leaſes not exceeding 3 years from the making, whereupon the rent reſerved ſhall be at leaſt two thirds of the improved value."—*See the conſtruction of this Statute* poſt *Tit.* AGREEMENTS.

But though leaſes exceeding the term of 3 years muſt be in writing, no particular form of words is neceſſary to conſtitute a good leaſe; for a leaſe for years (as we before obſerved) being no other than a contract for the poſſeſſion and profits of land on the one ſide, and a recompence to be paid on the other, any words that in their import are ſufficient to ſhew ſuch contract, will in law amount to a leaſe: if therefore I covenant with another that he ſhall hold premiſes for ſuch a time, this is a good leaſe; for there are ſufficient words to prove an agreement that the one ſhall quit, and the other take poſſeſſion of the land. *Cro. Eliz.* 173. 1 *Co.* 129. 11 *Mod.* 42. 12 *Ibid.* 610. 5 *Term. Rep.* 163. 2 *Anſtr.* 418.

Made to a ſubject of the realm.

In order that a leaſe may be valid, it is fit too that it be made to one born within the three kingdoms of England, Scotland, or Ireland, or be naturalized therein; for by 32 Hen. 8. *c.* 16. all leaſes of any dwelling *houſe* or *ſhop* made to any ſtranger, artificer or handicraft-man born abroad, not being a denizen, ſhall be void. Both the leſſor and leſſee are alſo by the ſame ſtatute ſubject to a penalty of 5l. This ſtatute, however unjuſt or impolitic, ſtill remains unrepealed, though, in honour to the courts, it is to be remarked, that it has always been conſtrued with great ſtrictneſs. 1 *Saund.* 7. 3 *Mod.* 94. 2 *Show.* 135.

And it is ſaid by lord Coke, that leaſes for years to an alien, of *lands*, *meadows*, &c. are forfeitable to the king on office found, (*i. e.* on his being found to be an alien) but not before. *Co. Lit.* 2. b.—It has been held, however, that an alien *merchant* may take a houſe for his own reſidence, but it ſhall not go to his executors. The reaſons given for theſe laws (beſides the general policy that foreigners may not get too much footing in the kingdom) is, that they may be puniſhed for their preſumption in attempting to acquire landed property in the king's dominions. 1 *Black. Com.* 372.

Muſt be read.

It is alſo requiſite that a leaſe be read by or to the parties, if they require it, otherwiſe it may be vacated; as it may alſo, if it be read falſely in order to deceive. 2 *Co.* 3, 11.

As to its commencement and determination.

We have ſeen that a leaſe for life muſt commence on the very day upon which it is made; but this is not neceſſary in a leaſe for years, for as no corporeal poſſeſſion at common law need be given of this eſtate, as of an eſtate for life, it may begin at any future period that ſhall

be agreed upon between the parties. It ſhould be obſerved, however, that until the commencement of the term, and entry be made by the leſſee, no legal poſſeſſion is veſted in him by his leaſe, but only a *right* of poſſeſſion; he cannot therefore, before entry, bring an action of treſpaſs. *Co. Lit.* 46. 1 *Mod.* 262.

In a leaſe for years the time when the term is to begin, and when it is to end, muſt be certain and determinate, or at leaſt ſuch as by reference to ſomething elſe may be reduced to a certainty, otherwiſe the leaſe will be void: therefore a leaſe for ſo many years as ſuch a one ſhall live, would be void; but a leaſe for ſo many years as ſuch a one ſhall name, is good, becauſe though it is at preſent uncertain how long the eſtate will continue, yet it will be reduced to a certainty as ſoon as the term is named. *Noy Max. p.* 86. *Co. Lit.* 45.—And the term muſt be named during the lives of the leſſor and leſſee, or it will not be good, 1 *Co.* 156. a. for it is eſſential that there be both leſſor and leſſee living at the time the leaſe is made. 3 *Bur.* 429.

If no time is mentioned in the leaſe at which it is to begin, it will commence on the day it bears date; and if the date happen to be omitted, it will commence on the day it is executed. *Co. Lit.* 46. *b.* and ſee *Stiles*, 118.

A leaſe may bear date as far back as the parties chooſe, but it cannot bear date on a day ſubſequent to its execution; the reaſon of which is, that if it might be dated at a future day, it might be made to convey the eſtate in perpetuity, which is contrary to the ſtatute law.

Leaſe muſt be ſigned and ſealed;

It is further neceſſary, in order to the validity of a leaſe, that it be *ſigned and ſealed* by the parties, or at leaſt by their *agents*, properly authorized. 1 *Anſtr.* 229.

But though a leaſe ought properly to be ſigned by *both* parties, yet it will be good if ſigned only by the *leſſor*, provided the leſſee accept of it. But if it be ſigned by the *leſſee* only, it will operate nothing. *Ow.* 100. becauſe nothing can paſs by it.

and delivered.

The laſt thing requiſite is, that the leaſe be *delivered* either by the leſſor himſelf, or by his attorney, in the preſence of one or more witneſſes; the form of doing which uſually is for the party to place his pen upon the ſeal, after having put his ſignature to it, and ſay, "I de-"liver this as my act and deed;" any words however, importing as much, will be equally good—and it is proper for the preſervation of their teſtimony, though not ſtrictly

neceſſary, that the witneſſes ſhould ſubſcribe a memorandum on the back of the leaſe, of the due execution.

It may properly be remarked here, that a writing, though not purporting to be a leaſe, but only an agreement for a *future* leaſe, will, if it contain words of *preſent* contract be good as a *leaſe*, ſo that it appears to be the intention of the parties that it ſhould. 2 *Blac. Rep.* 973. 1 *Term. Rep.* 735—2 ib. 739. Agreement for a leaſe.

When the term of a leaſe is expired, the leſſee muſt deliver up poſſeſſion to the landlord, or he will ſtill be conſidered as tenant, and liable to the rent. 1 *Eſp. Ca.* 57.

3. *Of Covenants, Proviſoes, Clauſes, and Agreements in Leaſes for Years.*

A *covenant* in a deed is an agreement, conſent, or promiſe that ſomething is already done, or not done, or that ſomething ſhall be done, or ſhall not be done hereafter. *Plow.* 308. Covenant, what.

A *proviſo* is a condition inſerted in a deed or writing, upon the obſervance of which the validity of the deed depends. It differs from a covenant in this, that a *proviſo* is in the words of and binding upon both parties; a covenant in the words of the covenantor only. Covenants are either expreſs or implied. *Expreſs Covenants* are ſuch as are expreſsly mentioned in the deed; as a covenant that the leſſee ſhall keep the demiſed premiſes in repair: *implied*, where the thing to be done or to be omitted is not expreſsly provided for in the deed, but inferred by law from the nature of the contract; as, if a leaſe for years be made by the words *demiſe* or *grant*, without any covenant for quiet enjoyment, the *law implies* a covenant on the part of the leſſor, that he ſhall permit the leſſee quietly to enjoy the thing demiſed. Proviſo, what.

By clauſes and agreements in leaſes is generally underſtood, ſuch incidental parts of the contract between the parties as are not formally ſet forth in the *ſhape* of proviſoes or covenants—they differ, however, nothing from thoſe in their *effect*, and are binding on one or all of the parties according to their import and tenor.

The perſon who makes the covenant is in law termed the *covenantor*, and he with whom it is made the *covenantee*.

In leaſes the neceſſary and uſual covenants are,

From the landlord—

For quiet enjoyment;

To ſave harmleſs from all perſons claiming title;
For further aſſurance.

From the tenant—

To pay the rent and taxes; (except land tax)
To keep the premiſes in repair.

Theſe and a variety of others, with practical obſervations upon each, will be found, *Appendix*, No. II.

In reſpect to *expreſs* and *implied* covenants which we have juſt ſpoken of, it is material to obſerve, that the *implied* covenant is in all caſes controuled within the limits of the *expreſs* covenant. 4 *Co.* 80.—which furniſhes us with a uſeful caution not, to introduce into leaſes any more *expreſs* covenants than the caſe may abſolutely require, leſt the implied covenants ſhould be thereby rendered ineffectual.

Conſtruction of covenants.

It is not neceſſary in order to conſtitute a good covenant, that the word "covenant" or that any other particular words ſhould be uſed—as any thing under the hand and ſeal of the parties which imports an agreement, will effectually amount to a covenant.

Thus the words "yielding and paying," uſually inſerted in leaſes, are held to be ſufficient to ſupport an action of covenant for non-payment of rent. 1 *Vent.* 10. See alſo *Cro. Jac.* 399—& 2 *Anſtr.* 418.

And ſo where the leſſee's covenant to repair is followed by "Provided always, and it is agreed, &c. that the leſſor ſhall find timber for ſuch repairs," this makes a covenant on the part of the leſſor, to provide ſuch timber—but where no actual *agreement* to do the thing is implied, there will be no covenant, though the words may ſeem of nearly the ſame import, as if it had been that the leſſee would repair, "Provided, &c. that the leſſor finds timber," this would have been no covenant on the part of the leſſor, but only a *condition*, on the performance of which, and not ſooner, the leſſee would be bound to fulfil his covenant to repair. 1 *Roll. Abr.* 518.

The recital of an agreement in the beginning of a deed, has been held on a ſimilar principle, as being admitted and adopted by both parties, to amount to a covenant—as ſee 3 *Keb.* 465. 1 *Leon.* 122.

Where a covenant is expreſsly entered into by a party, it will at law be ſtrictly conſtrued, and he will *at all events* be bound to perform it.

Thus where a tenant covenants to pay rent during the term, he will be bound to pay it, though the premiſes

ſhould be deſtroyed by fire or other accident, and not be rebuilt by the leſſor. *Dy.* 33. *a.* 3 *Bur.* 1637. 1 *Term. Rep.* 310. 710, and ſee 6 *ibid.* 488, 650—but quære whether relief would not be given in *Equity*, and ſee *Amb.* 6, 9. 1 *Term. Rep.* 708. 2 *Anſtr.* 575.

If a leſſee unconditionally covenant to pay rent, an action will lie upon the covenant, even though the leſſor prevent his enjoying the premiſes; 2 *Stra.* 763, becauſe, when a man charges himſelf by his own expreſs contract, he is bound to abide by it if practicable, notwithſtanding the default of others, and ſee 6 *Term. Rep.* 650.

And ſo if he covenant to repair, and the houſe, &c. be conſumed by lightning or the king's enemies, he is ſtill liable. *Dy.* 33. 2. *Show.* 401.

It may be uſeful to inſert here an obſervation or two relative to accidental fire, as far as concerns landlords and tenants. The 6 Ann. *c.* 31. at firſt only temporary but now perpetual, enacts, that no action ſhall lie againſt *any perſon* in whoſe houſe any fire ſhall accidentally begin—with a proviſo, however, that the act ſhall not affect any agreement between landlord and tenant. A tenant therefore will not be liable, unleſs by *ſpecial agreement*; and it has with ſome reaſon been doubted whether a covenant to repair *generally* will amount to ſuch an agreement, and extend to the caſe of fire; on this account, if it is not intended that the tenant ſhall be anſwerable for damages by fire, it is proper and uſual in leaſes to make an exception as to accidental fire in the covenant to repair.

Conſtruction of covenants.

It is a rule in law, that where there is any doubt as to the true conſtruction of a covenant, it ſhall be taken moſt ſtrongly againſt the covenantor.

Therefore, where a tenant covenanted, that his landlord ſhould have all the grains made in his brewery, and abided by his covenant, but put hops in the grains, ſo that cattle would not eat them, the covenant was held to be broken. *Raym.* 464.

And ſo where a man covenanted to leave at the end of the term, all timber trees then growing thereon, and left them *cut down*, it will be a breach of the covenant. *Eſp.* 271.

A covenant extends only to ſuch things as are in being at the time of the agreement: therefore, where a tenant covenanted to pay "all taxes," this binds him to the payment of ſuch taxes only, as were in being when the leaſe

was made, and not to taxes or charges afterwards impoſed. 1 *Vent.* 223. 2 *Lev.* 68.

Land tax.

And where it is covenanted in a leaſe, that the tenant ſhall pay all taxes *except land tax*, it has been held that this exception extends only to the tax payable at the time of the demiſe, and not to the additional land-tax, which may be occaſioned by an improvement of the eſtate. 3 *Term Rep.* 377.

And in a caſe where a leſſee for 21 years, having covenanted to repair and to pay all taxes and *impoſitions*, aſſigned his term for a ſmall conſideration, it was adjudged that he was not liable to pay the expence of a party-wall, either by the covenant, or by ſtat. 14. *Geo.* 2, c. 48. but that it muſt be borne by the original landlord. 3. *Term Rep.* 458.

Quiet enjoyment.

The covenant for quiet enjoyment is held to extend only to the leſſor, and thoſe claiming under him, and not to the eviction or diſturbance of a ſtranger, even though the words of it may be ſufficiently extenſive to include all perſons whatever. *Cro. Eliz.* 213. 3 *Term Rep.* 584. —and ſee 6 *ibid.* 488.

But the act of a ſervant done by the maſter's command, will be a breach under ſuch a covenant, becauſe the act of the ſervant is deemed the act of his maſter. 1 *Leon.* 157.

And though the covenant uſually runs "for enjoyment, notwithſtanding the *lawful* hindrance of the party," yet any diſturbance however tortuous, ſeems to be within the covenant. 1 *Term Rep.* 671.

Covenant againſt aſſignment.

Covenants reſtraining a leſſee from aſſigning his term, were thought by *Thurlow*, Chan. 3 *Bro. Ch. Ca.* 632, to be unreaſonable, and therefore not compulſive, but it has ſince been determined otherwiſe. *Eſp. Ca.* 8.

A covenant that a leſſee ſhall not *aſſign* or ſet over the leaſe or the premiſes demiſed without licence, does not extend to an *under leaſe*, that not being in any caſe conſidered as an aſſignment. 2 *Black. Rep.* 766. *Doug.* 56. 184. 3 *Wilſ.* 234.

But if the words are, that he ſhall not ſet, *let*, or aſſign, the covenant will extend to an under leaſe, which, though not an aſſignment, is a *letting* of the premiſes. 2 *Term Rep.* 366.

But an aſſignment by act of *law* as a bankruptcy, is no breach of the covenant not to aſſign. 3 *Wilſ.* 236.

And after licence to let or aſſign is obtained, the aſ-

ſignee is not bound by the covenant, but may let or aſſign at pleaſure. 4 *Co.* 119.

A covenant to repair and deliver up the demiſed premiſes at the end of the term, extends to erections made during the demiſe, as well as thoſe in being at the time of the contract made. 3 *Lev.* 264. Covenant to repair.

And where the leſſor covenants to repair, and neglects to do it, it ſeems that the leſſee may repair, and deduct the expences out of the rent. *Co. Lit.* 54. 1 *Ld. Raym.* 420. 2 *Anſtr.* 575. *Holt. C. J.* however expreſſed ſome doubts as to this—ſee 1 *Leon.* 237.

The uſual words of a covenant for further aſſurance are, that the leſſor ſhould make ſuch as *counſel* ſhall adviſe, in which caſe it has been determined, that he is not bound to attend to any requiſition of the party himſelf, 5 *Co.* 19. a. And this advice of counſel is to be given not to the leſſor but to the leſſee, who is to communicate it to the leſſor. *Cro. Eliz.* 9—and the leſſor is to have reaſonable time allowed him to make ſuch aſſurance after notice given him. 1 *Roll. Abr.* 441. Further aſſurance.

Though a tenant covenants to pay the reſerved rent "without any deduction or abatement whatſoever," it has been determined, that the tenant may nevertheleſs *deduct* and *retain* the land-tax out of his rent, if ſuch tax is to be paid by the landlord. *Eſp.* 278. Taxes.

In a covenant to uſe land in an *huſband-like* manner, the tenant is (per Buller Juſt.) "to uſe on the land all the manure made there, except that when his time is out he may carry away ſuch corn and ſtraw as he may not have uſed, and is not obliged to bring back the manure produced by it." *Eſp.* 279.

Other caſes which have recently been determined relative to the law of covenants in leaſes are, that where there was a leaſe for 61 years, and a covenant that the leſſor would at any time, within one year after the expiration of the firſt 20 years, grant a further term of 61 years, to commence from the determination of the term of 61 years firſt granted, and ſo in *like manner* at the end of every 20 years during the ſaid term; it was held that the leſſee could not claim the additional term of 61 years at the expiration of the laſt 20 years of the term, if he had neglected to claim it before. 1 *Term Rep.* 229. *Note*, this caſe turned on the particular wording of the covenant, and the apparent intention of the parties. Further term.

A covenant in a leaſe for lives, to renew on the death Renewal.

of every life, under the ſame rent *and covenants*, ſhall be taken to be a perpetual covenant of renewal. *Coup.* 819.

It was however obſerved by the court, that this was a hard caſe for the leſſor; but as there had been four ſucceſſive renewals, he was conceived to have put his *own* conſtruction upon the covenant.

"Uſual covenants."

Where a tenant for life had a power to grant leaſes for years of his eſtate, ſo that ſuch leaſes contained only the uſual covenants, and he made a leaſe thereof, with a proviſo, that if the premiſes ſhould be deſtroyed by tempeſt or fire, the leſſor ſhould rebuild, and on failure the rent ſhould ceaſe: the leaſe was held to be void on the jury's finding that ſuch proviſo was *unuſual*. 1 *Term Rep.* 705.

And a leaſe of tythes under a power to grant leaſes of *all or any part of the premiſes*, reſerving the *uſual* rent, was held to be void, becauſe the tythes had not been uſually letten, and conſequently no *uſual* rent could be reſerved. 3 *Term Rep.* 366.

A covenant to pay rent at a certain quarter-day, *or* within ſo many days after, is held not to be broken till the expiration of the *extra* days, the "or" giving the tenant an option. 2 *Show.* 77.

Merger.

Where a perſon having the reverſion of a term for years accepts a releaſe, by which the reverſion is merged, the covenants incident to it will merge likewiſe. 3 *Term Rep.* 393.

It was doubted whether a condition of re-entry by the leſſor, in caſe the leſſee became a bankrupt, was valid, but held that it was. 2 *Term Rep.* 133.

Breach of covenant.

When a covenant is merely negative and paſſive, ſome act muſt be done to conſtitute a breach; therefore, where *A* covenanted to *permit B* to ſow clover amongſt barley, to be ſown by him *(A)*, and *A* ſowed in the laſt year without giving notice to *B*, it was held to be no breach. *Doug.* 125.

Actions of *covenant* for non-payment of rent, muſt be brought where the lands lie, and not where the rent is payable. 1 *Salk.* 80. 1 *Show.* 191—But in actions of *debt* it is otherwiſe—ſee more as to the conſtruction of covenants. 2 *H. Blac. Rep.* 389—6 *Term Rep.* 16—*Ib.* 458, 488.

As to ſuch covenants in a leaſe as run with the land, and bind aſſignees, and ſuch as do not, ſee title ASSIGNMENT, *p.* 25.

4. *Concerning the Intereſt a Leſſee for Years has in the Premiſes demiſed to him; and other miſcellaneous Incidents to an Eſtate for Years.*

Beſides the intereſt expreſsly given to a tenant by his leaſe, a tenant for years has the ſame right to eſtovers, or botes, as we before obſerved that a tenant for life was entitled to, viz. wood for *repairs* and *firing*; for making *inſtruments of huſbandry*; and for *hedging and fencing*: theſe are incident to and inſeparable from his eſtate, and may be taken without any aſſignment or conſent of the leſſor, unleſs by expreſs agreement to the contrary. *Co. Lit.* 45.

Leſſee for years has a right to eſtovers.

A tenant for *life*, we have ſeen, may carry away, after the expiration of his term by the death or default of the leſſor, the emblements, or growing profits of the land; and this, we remarked, was for the encouragement of huſbandry, and becauſe it would be unjuſt that one perſon ſhould be injured by another's default: but it is otherwiſe with regard to a tenant for a *certain* term of years; for as to him the reaſon does not apply; if therefore a perſon hold from Midſummer for 10 years, and ſow a crop of corn, which is not cut at the expiration of his term, he cannot afterwards return to cut it; *Lit.* 568, for knowing the time when his intereſt in the premiſes determined, it was his own fault to ſow corn which he knew he could not reap: it is therefore proper, when this is likely to happen, to inſert a clauſe in the leaſe impowering the leſſee to enter upon the land to cut and carry away the produce which may be growing upon the land when his term expires.

But not to emblements.

But where the determination of an eſtate for years depends upon an uncertainty, as when the leſſor is only tenant for life, then the eſtate not being to determine at a time *certain*, as in the laſt caſe, but by the act of God, the tenant for years or his executors ſhall have the emblements, in the ſame manner as a tenant for life or his executors would, unleſs indeed the eſtate be determined by the tenant's own default, as by forfeiture, &c. when they ſhall go to the landlord as before. *Co. Lit.* 56. 1 *Term Rep. C. B.* 5. 2 *Black. Com.* 144.

Unleſs in particular caſes.

And by the particular cuſtom of ſome places, the ſame privilege in regard to emblements is allowed to leſſees for years, as to thoſe at will. And in this caſe he is in general allowed barn-room for his wey-going crop till a given period. *Doug.* 190.

Tenant has only a *ſpecial* intereſt in timber.

A tenant for years or otherwiſe, has only a ſpecial or partial intereſt in trees growing upon the land demiſed to him; this intereſt conſiſts in the ſhade they afford his cattle; the fruit they produce; and the loppings for repairs, firing, &c.: if, therefore, they are blown down, or otherwiſe ſevered from the ſoil, they become the property of the landlord as part of the inheritance. 4 *Co.* 62. a. *Noy. Max.* p. 88.

This liberty however, it is ſaid, does not extend to copyholds, unleſs by ſpecial cuſtom. *Cro. Eliz.* 5—but ſee *contra.* 13 *Co.* 68, and poſt Tit. *Copyholds.*

Cannot remove fixtures.

It is a general rule in law, that whatever is fixed to the ſoil, ſo as to become, as it were, a part thereof, cannot be removed, and will at the expiration of the leaſe belong to the leſſor: but it has been held, that a tenant may remove what he has affixed for the convenience of his buſineſs, as counters, ſhelves, &c.; and alſo chimney-pieces and wainſcot put up by himſelf; provided, however, he do it during the continuance of his term, for if he let them remain till his term is ended, he cannot remove them without committing treſpaſs. 1 *H. Black. Rep.* 258.—Other things may alſo be removed by the ſpecial cuſtom of particular places. *Bul. Ni. Pri.* 34.

Exceptions in leaſe.

Notwithſtanding an exception in a leaſe of certain cloſes, or rooms, which the leſſee is not to uſe, he may paſs and repaſs through them, if they are ſo ſituated as that he cannot otherwiſe have the complete enjoyment of the lands or premiſes demiſed to him. 11 *Co.* 52. a.

Eſtate not determined by loſs of the deed.

The eſtate of a leſſee is not determined by the loſs of the leaſe, ſo that the exiſtence of the term can be proved; for the eſtate is derived from the leſſor, and not from the leaſe, otherwiſe than as the leaſe ſhews the intention of the parties, which is not altered by the loſs of the deed. 3 *Term Rep.* 151.

Privilege of leſſor.

A leſſor may enter upon the premiſes of his leſſee to ſee the ſtate of the repairs, though there be no covenant for that purpoſe, ſuch liberty being allowed by law for the *general* benefit of the leſſor's eſtate. *Co. Lit.* 54.

But he cannot enter upon them in order to fell timber, work mines, or the like, without an expreſs covenant allowing him to do ſo, for *particular* advantages belonging to *ſome* leſſors only, and not to all, muſt be provided for by particular agreement. *Co. Lit.* 54.

A leaſe was granted of premiſes deſcribed to be late in the occupation of *A*, part of theſe was a yard; and it was

a queſtion, whether, agreeably to the rule of law, that a grant of land extends to all that is immediately above or beneath it, paſſed a cellar under the yard in the occupation of another perſon; and it was held not, becauſe contrary to the intention of the parties, and to juſtice. 1 *Term. Rep.* 701.

If a leaſe be granted of a houſe "and the appurtenances," the outhouſes, orchard, garden, and yard will paſs, but not other land. *Plow.* 70. Appurtenances.

A leaſe from year to year, during the pleaſure of the parties, will, after entry, be a leaſe, and ſubſiſt until half a year's notice to quit be given by one of the parties: and if the tenant die inteſtate, his adminiſtrator will have the ſame intereſt in the premiſes as he had. 3 *Term Rep.* 13. Continuance of leaſe.

And a leaſe for *one* year, and ſo from *year to year* as long as both parties ſhall agree, is held to be good for *two* years certain, and that afterwards the premiſes are held at will. *Co. Lit.* 45 b.

And where a leaſe was made for 3, 6, or 9 years, at the option of either party, it was conſidered as a leaſe for 9 years determinable on notice. 3 *Term. Rep.* 377.

Alſo if a leaſe be made for 21 years, with a covenant from the leſſor that the leſſee ſhall have the ſame for 21 years more after the expiration of the ſaid term, and ſo from 21 years to 21 years, until ninety-nine years from *thence* next enſuing ſhall be completed: the ninety-nine years are to be computed from the end of the firſt 21 years. 2 *Show.* 31.

5. *The means by which an Eſtate for Years may be parted with, or determined.*

An eſtate for years or for life may be parted with or deſtroyed, How leaſe may be determined

By Aſſignment;
By Surrender; or
By Forfeiture,

And firſt *of an Aſſignment.*

An aſſignment is the transfer or making over to another of that right or intereſt which a perſon may have in lands or tenements: it is in its nature applicable to *any* eſtate, but is uſually applied to an eſtate for life or years. 2 *Black. Com.* 326. 1. By aſſignment.

The parties to an aſſignment are the *aſſignor* and the *aſſignee*; the aſſignor is he that aſſigns, and the aſſignee he to whom the aſſignment is made.

What neceſſary to make a good aſſignment.

In order to conſtitute an effectual aſſignment, the *whole* term of the aſſignor muſt be made over, for if a part only of it be transferred, it is not properly an aſſignment but an *under-leaſe*, the difference of which is, that in an *aſſignment* the aſſignee ſtands in the ſhoes of the aſſignor, and is, generally ſpeaking, anſwerable for all the covenants which *he* was bound to perform; whereas an *under-leſſee* is tenant to his immediate leſſor only, and has nothing to do with the terms of the original leaſe. 1 *Mod.* 268. 2 *Anſtr.* 413.

And if the term made over be but for a day leſs than the whole term, it will not amount to an aſſignment. *Doug.* 174, on the contrary, if the whole term be made over, it will be conſtrued to be an aſſignment, though the rent, and a power of re-entry, be reſerved to the *leſſee*, and though new covenants be introduced in the aſſignment. *Ibid.* 185.

Muſt be in writing.

An aſſignment muſt, like a leaſe, be put into writing: this was not neceſſary at common law, but by the ſtatute of frauds, 29 *Car.* 2. *c.* 3. it is provided that no leaſes, eſtates, or intereſts, &c. ſhall be *aſſigned*, granted or ſurrendered, unleſs it be by deed, or note in *writing* ſigned by the party aſſigning, &c. or his agent, or by operation of law.

But no particular form of words is neceſſary to make it valid, ſo that it clearly expreſs the intention of the parties, and under the words "note in writing," mentioned in the ſtat. it ſeems that an aſſignment may be made by a mere memorandum, ſigned by the party, without being either ſtamped, or ſealed or delivered. 1 *Wilſ.* 27. but *quære*, and ſee *poſt*.

No conſideration neceſſary.

Nor need any conſideration be expreſſed in an aſſignment, for the aſſignee's being ſubject to the payment of the rent reſerved in the leaſe is held to be a ſufficient conſideration. *Noy Max.* p. 92.

If defective, ſhall be an *under-leaſe*.

And as deeds are conſtrued moſt ſtrongly againſt the maker, it has been held, that if from any defect in an aſſignment, it cannot be good *as ſuch*; it ſhall, againſt the party aſſigning, be good as an *under-leaſe*. 1 *Doug.* 188.

Covenants of *leſſee* binding *aſſignee*.

As we have ſaid that aſſignees are in *general* liable to perform the covenants of the leſſee, it will be proper to enquire more *particularly* in what caſes this rule holds, and in what it does not. The general rule is, that an aſſignee

will be liable for the breach of all ſuch covenants as, in the legal phraſe, *run with the land*, but not for ſuch as are *collateral* to it. We muſt conſider therefore, what covenants *do* and what *do not* run with the land, and bind the aſſignee.

What covenants run with the land, and what not.

Thoſe covenants are held to run with the land which extend and relate to things in being at the time of the demiſe, in ſuch a direct and ſubſtantive manner, as to be conſidered as a part of the grant, as covenants to repair, to pay rent, &c. ſuch covenants being inherent, as it were, to the land, go along with it, and bind the aſſignee, and that though he be *not named in the deed*; thus covenants that the grantor is *ſeized in fee*; has *a right to convey*; for *quiet enjoyment*; and *further aſſurance*, alſo run with the land, becauſe they concern the *title* of the thing granted or demiſed; but when a covenant relates to ſomething not in being at the time of the demiſe, or ſomething merely perſonal, or *collateral* to the thing demiſed; as to pay a ſum of money in groſs or the like, it does not run with the land, and aſſignees are therefore not bound, even though *they be expreſsly named*. 5 *Co.* 16. b. *Noy Max. c.* 41. and ſee 1 *Show.* 199.

Yet if the covenant regard ſomething to be done *upon* the land, and the *aſſignee* be named, though it were *not* in being at the time of the demiſe, and be in ſome meaſure collateral, as to build a new houſe upon the land, &c. it ſhall bind the aſſignee, becauſe he will receive the benefit of it. 5 *Co.* 16. b.

Thus where leſſee for years covenants duly to pay the rent, to keep the premiſes demiſed to him in tenantable repair during his term, not to commit waſte, &c. and then aſſigns, the aſſignee, and all claiming under him, ſhall be bound, becauſe theſe things concern and are appurtenant to the thing demiſed, and therefore run with the land. *Cro. Eliz.* 457. *Hob.* 188. and 1 *Anſtr.* 96, which reſpects the *mortgagee* of premiſes,—ſee alſo 2 *ib.* 413.

And where there was a covenant to uſe the land in an huſbandlike manner, and leave in like condition, it was held to be ſuch a covenant as ran with the land, and the executor of the landlord was permitted to ſue upon it. *Eſp. Ni. Pri.* 295.

And ſo in other caſes where the covenant is for the benefit of the eſtate demiſed, it will extend to the aſſignee, though not named. Thus a covenant that a leſſee ſhould reſide on the demiſed premiſes during the term, was held

to extend to his aſſignee, though not named in the covenant. 2 *H. Black. Rep.* 133, and ſee *Cro. Jac.* 125. 5 *Co.* 24.

But in order to make an aſſignee liable, he muſt be properly an *aſſignee*, having the *whole* of the leſſee's term, and not an under leaſe only of *part of the term*. *Doug.* 174.

But where leſſee of premiſes covenanted for himſelf and his aſſigns to pay 40*s.* a year to the church-wardens of the pariſh for certain purpoſes, his aſſignee was not bound to pay it, it being a mere perſonal contract of the covenantor's, and irrelevant to the thing demiſed. *Cro. Jac.* 438.

Nor was a covenant in a leaſe for payment of rent, and doing of repairs, entered into by a leſſee with a mortgagor, his executors, adminiſtrators and aſſigns, held to run with the land ſo as to enable the aſſignee of the mortgagee to maintain an action for the breach of them, though the mortgagor joined in the leaſe. 3 *Term Rep.* 393. 678.

Aſſignee not liable for covenants broken before aſſignment.

An aſſignee is not bound by a covenant entered into by the aſſignor, and broken *before* the aſſignment; as where leſſee covenanted for himſelf and his aſſigns to rebuild a houſe before ſuch a time, but neglected to do it and aſſigned his term, it was adjudged that the aſſignee was not bound to rebuild. 3 *Bur.* 1271. 1 *Black. Rep.* 351.

Nor after he has aſſigned over.

Nor is an aſſignee liable for the breach of any *covenant* after he has aſſigned over his term. 1 *Freem.* 336. *Noy Max.* 91, becauſe the privity of eſtate is gone. Therefore an action of *covenant* will not lie againſt an aſſignee for rent due after his aſſignment over to another, although made without notice to the leſſor. 1 *Show.* 340. *Cro. Jac.* 309.

But the leſſor may have an action of *debt* againſt a *leſſee* for rent in arrear after aſſignment, becauſe the privity of *contract* ſtill remains. 3 *Co.* 22.

But if the leſſor accept the aſſignee for his tenant, the leſſee will be diſcharged of *debt*, this deſtroying the privity; but covenant will ſtill lie—*Note*, receiving rent from him is held to be a ſufficient acceptance. *Cro. Jac.* 334. *Cro. Car.* 188. The aſſignee is however bound for the rent only while he continues in poſſeſſion, for if he aſſign, the privity of eſtate is gone, and the leſſor has no further lien upon him. *Salk.* 81. 2 *Stra.* 1221. *Show.* 340. Nor are the executors or adminiſtrators of a leſſee

chargeable for rent after they have aſſigned the term. *Cro. Eliz.* 715. 3 *Co.* 24. a.

But if there be a covenant which runs with the land, the executor or adminiſtrator of an aſſignee, will be liable—ſuch covenants binding thoſe who come in by act of law, as well as thoſe by the act of the parties. 5 *Co.* 17. b. 4 *Term Rep.* 75.

And where an *expreſs* covenant is entered into by the leſſee, he is not diſcharged by an aſſignment, the privity of contract remaining, though the privity of eſtate is gone. *Cro. Jac.* 309. *Cro. Car.* 418. 3 *Wilſ.* 25.

And ſo when leſſee became a bankrupt, and his eſtate transferred to aſſignees, he was held to be ſtill liable on his covenant for rent, the aſſignees not being liable till they have taken poſſeſſion. 4 *Term Rep.* 94. 1 *Eſp. Ca.* 233. *Peake's Ca.* 239, and ſee 2 *H. Blac. Rep.* 319.

Theſe caſes, however, do not extend to implied covenants or covenants in law. *Cro. Car.* 188.

The aſſignee of an aſſignee, and of executors and adminiſtrators, as alſo the executors or adminiſtrators of an aſſignee, or of a leſſee, are all comprehended under the word "aſſigns," and therefore bound when *they* are bound. 5 *Co.* 17. b. 1 *Salk.* 309. 1 *Show.* 348. Aſſignees of aſſignees, &c. liable.

But an *under-leſſee* is not included in the word aſſigns, and therefore not bound by the covenants entered into by the original leſſee. *Doug.* 184. 2 *Anſtr.* 413.

And where leſſee covenanted that he, his executors, or adminiſtrators, would not aſſign, and became a bankrupt, it was held that the aſſignees under the commiſſion would not be bound, provided they made a *fair* aſſignment. *Ambler* 480.

In an abſolute indefeaſible aſſignment, the aſſignee is liable even before he take poſſeſſion. *Doug.* 461. The rent, &c. being due by the contract, and not by the deed.

But a mortgagee is not, though the mortgage be forfeited, until he take actual poſſeſſion; for only *ſubſtantial* aſſignees in the actual or potential enjoyment of the eſtate are liable to actions in reſpect of their eſtate; whereas a mortgagee is but a *nominal* aſſignee as it were, with a naked right. *Doug.* 455, and ſee 1 *Anſtr.* 96. But not a mortgagee.

If a leſſee grant or aſſign part of his eſtate, yet the entire privity of action remains for the whole rent againſt the firſt leſſee. But an aſſignee of a part of the eſtate, is not liable for the rent of the whole. *Doug.* 186.

Where there was an exception in a leaſe, of an entry

and liberty to wash in the kitchen, and a passage for that purpose, it was held, that an action would lie against an assignee for hindering the lessee. 1 *Show.* 388. and so of other similar cases. *Salk.* 196.

Lessor need not accept assignee.

If a lessee assign over his term, the lessor is not obliged to accept the assignee for his tenant, but may still resort to his lessee; if, however, he receive rent of the assignee, knowing of the assignment, he has determined his election, and shall not afterwards have an action of debt against the lessee for rent due after the assignment; though it has been held that he may nevertheless maintain an action on the lessee's covenant, that being a personal engagement, which is not waived by the assignment. *Noy Max.* 91.

Proper covenant in an assignment.

In an assignment of a lease, it will be proper to insert the following covenants.

From the assignor—

That the indenture of lease is good in law.
That the assignor has power to assign.
To save the assignee from former rents, grants, and incumbrances.
For the delivery of deeds and evidences;
That the assignee shall quietly enjoy.

From the assignee—

That he will pay the rent;
That he will perform the covenants in the lease, or save the assignor therefrom.

The forms of these different covenants may be seen, Appendix, No. III.

The second mode by which an estate for life or years may be destroyed, we have said is by surrender; which we shall now consider.

Of a Surrender.

2. By surrender.

A surrender is the yielding up of an estate for *life* or *years* to him who has the immediate remainder or reversion, wherein the estate for life or years may drown by mutual agreement of the parties. *Co. Lit.* 337. b. an estate at *will* or *sufferance* cannot therefore be surrendered. *Cro. Eliz.* 156.

Surrender may be by deed or in law.

A surrender may be effected either by an express agreement between the parties for that purpose, or by implication of law.

An *expreſs* ſurrender muſt be in writing; for by the ſtatute of frauds and perjuries it is provided, that no leaſes, eſtates, or intereſts, either of freehold, or terms for years, ſhall be ſurrendered, unleſs by deed or note in writing, or by operation of law; but no particular form of words is neceſſary to make a ſurrender; for as a leaſe is only a contract between the leſſor and leſſee, any words which are ſufficient to ſhew the intention of the parties to diſſolve that contract, will work a ſurrender. *Cro. Jac.* 169. and ſee ante, p. 13.

What neceſſary to make a good ſurrender by *deed*.

And in *Farmer* on demiſe of *Earl v. Rogers*, 1 *Wilſ.* 2d part 27, the Court ſaid that the words *releaſe and diſcharge* were much ſtronger than thoſe which would amount to a ſurrender.

Two things however are material in a ſurrender by *deed*, viz. 1. That the perſon ſurrendering be in poſſeſſion of the thing ſurrendered. 2. That the perſon to whom the ſurrender is made have a greater eſtate in the premiſes than the ſurrenderor, in which the eſtate ſurrendered may merge and be loſt. *Co. Lit.* 337.

Surrenderor muſt be in poſſeſſion; and have the leſs eſtate.

So that if a leaſe be made to commence at Michaelmas *next*, it cannot before Michaelmas be ſurrendered by *deed*, becauſe the leſſee is not in poſſeſſion of the thing demiſed. *Co. Lit.* 338. *Noy Max.* p. 93. Nor can he who has a leaſe for 20 years ſurrender to him who has a leaſe for 10 only, becauſe the ſurrenderee muſt have the greater eſtate wherein the leſs may drown. *Co. Lit.* 218.

But where there was a leaſe for 20 years, and the leſſor granted the reverſion to another for one year, it was held that a ſurrender to the reverſioner was good, and was the ſame thing as ſurrendering to the leſſor himſelf. *Cro. Eliz.* 302. pl. 1.

Surrenderee's reverſion muſt be immediate.

And the reverſion of the ſurrenderee muſt be an *immediate* reverſion, ſo that if a leſſee for 30 years leaſe to *B.* for 10, *B.* cannot ſurrender to the firſt leſſee. *Plow. Com.* 541.

What requiſite to a ſurrender in *law*.

But by a ſurrender in *law*, it is not neceſſary that the ſurrenderor be in actual poſſeſſion, for if a leaſe be to commence at Michaelmas *next*, and the leſſee take a new leaſe *before* Michaelmas, this is a ſurrender in law of the former leaſe, becauſe by accepting a new leaſe he admits the leſſor to have a power of making ſuch, which he could not do if the firſt leaſe were to continue. 5 *Co.* 4.

But this new leaſe muſt be a demiſe of ſomething of the ſame nature as that which was leaſed by the old one, or

it will not work a ſurrender, for there is otherwiſe no inconſiſtency in their ſtanding together. *Cro. Eliz.* 873. *Moor.* 636. And it muſt be a *valid* leaſe, and ſuch an one as the leſſee can enjoy, or it will not be a ſurrender of the firſt. 4 *Bur.* 2213.

So if a leſſee for 20 years take a new leaſe for 10 years to commence at a future day, it is an *immediate* ſurrender of the 20 years leaſe, and the leſſor may enter *preſently*. *Cro. Eliz.* 522.

Or if a leſſee for *life* accept of a leaſe for *years*, it will be a ſurrender of the life eſtate. *Perk.* 68.

A preſent life eſtate may be ſurrendered to him who has the reverſion for life; as an eſtate for a man's own life is in judgment of law a greater eſtate than for the life of another. *Co. Lit.* 338.

Where leſſee agreed that leſſor ſhould have the premiſes as mentioned in the leaſe, and ſhould annually pay a conſideration beſides the rent, it was held that this operated as a ſurrender of the leaſe, and that the ſum to be paid above the rent was to be conſidered as a ſum in groſs, and not as *rent*. 3 *Term Rep* 441. and where a tenant makes a ſurrender of his eſtate to his leſſor, all rent due up to the time of the ſurrender is extinguiſhed, unleſs it be previouſly granted away by the leſſor to a third perſon, in which caſe it ſhall be paid, becauſe the law will not ſuffer an innocent perſon to be injured by another's act. 8 *Co.* 145.

New leaſe on renewal good without ſurrender of under-leaſe.

Formerly the renewal of leaſes for life or years was a ſurrender of all under-leaſes, and therefore could not be granted without the conſent of the under-tenants; to remedy which inconvenience, it was enacted by 4 Geo. 2. *c.* 28. § 6. that if any leaſe for life or years, where there are under-tenants by leaſe, ſhall be ſurrendered in order to a renewal, the new leaſe ſhall be valid without a ſurrender of the under-leaſes, and that the leſſees, by virtue of ſuch new leaſe, ſhall be entitled to the rents of the under-tenants, and the ſame mode of recovery thereof as if the original leaſe had been kept on foot.

As to the ſurrender of *copyhold* eſtates, ſee Chap V.

The laſt method that we think it neceſſary to mention, by which eſtates for life or years may be deſtroyed, is by *forfeiture*.

Of Forfeiture.

3. By forfeiture.

Forfeiture is a puniſhment annexed by law to ſome illegal act or negligence in the owner of lands, tenements,

or hereditaments, whereby he loſes all his intereſt therein. 2 *Black. Com.* 267.

An eſtate for years or otherwiſe may be forfeited not only by the commiſſion of thoſe acts which by the grant or leaſe are expreſsly forbidden on pain of forfeiture, but generally by any act done by the tenant, which is inconſiſtent with the nature of his eſtate, or the implied conditions on which it is holden; theſe are principally, 1. By alienation contrary to law. 2. By waſte. 3. By non-payment of rent. Of theſe we ſhall treat in order. How an eſtate may be forfeited.

As to what acts by the landlord or reverſioner, will amount to a waiver of the forfeiture, ſee *poſt*.

1. *By alienation contrary to law.* When a tenant for life or years grants a greater eſtate to another than by law he is entitled to grant, ſo as to diveſt the eſtate of him who is entitled to the reverſion, it is a forfeiture, as, if a tenant for his own life grant his eſtate during the life of another, (who may live longer than himſelf), or in fee, or tail; or if tenant for years grant for a longer term than he has in the premiſes, he forfeits his eſtate to him who has the remainder or reverſion, whoſe eſtate is thereby put in jeopardy, and in danger of being defeated: it is but juſt, therefore, as Sir W. Blackſtone obſerves, "that the eſtate "ſhould be forfeited, and taken from him who has ſhewn "ſo manifeſt an inclination to make an improper uſe of "it." There is, moreover, an implied condition annexed by law to every man's eſtate, "that he ſhall not "attempt to create a greater intereſt than he himſelf "has." *Co. Lit.* 251. *Noy Max. c.* 10. 1. By alienation contrary to law.

It is to be obſerved however, that ſuch an attempt will work a forfeiture, only when it is made by thoſe ſpecies of deeds which are held to diveſt the poſſeſſion of the reverſioner, as a *feoffment*, *fine* or *recovery*—if therefore the grant be made by leaſe only, or leaſe and releaſe, &c. though made for a longer term than the tenant has in the premiſes, it will be good for ſo many years as he really has in them. 3 *Mod.* 151. 2 *Term. Rep.* 171.

And if tenant for life or years commit felony, the king, or other lord of the fee, is immediately intitled to their eſtates by forfeiture, for the law annexes another condition alſo to every man's eſtate, "that he ſhall not "commit felony." *Co. Lit.* 215.

So, likewiſe, if a tenant do any act in a court of record which amounts to an expreſs or virtual diſclaimer of his eſtate, as, if he make claim of a larger intereſt than was

granted to him, or if by accepting a fine, or attorning tenant to a ſtranger, he affirm the reverſion to be in a ſtranger, and not in his lord, or the like, it will, for reaſons ſimilar to the above, amount to a forfeiture of his eſtate. *Co. Lit.* 252.

We have ſeen that alienation to a foreigner (not being a merchant) is a forfeiture to the king—the reaſon of which is founded on the general policy of guarding againſt an over-run of foreigners. *Ibid.* 2. b. 2 *Show.* 135. But if ſuch tenants have, before the forfeiture, granted a legal eſtate of their intereſt to a third perſon, (as, if tenant for 30 years make a leaſe for 10) that eſtate ſhall be good; for the law will not injure an innocent grantee on account of mal-feaſance of his grantor, nor permit the grantor by his own act to invalidate a contract which he himſelf has entered into. *Co. Lit.* 233.

As to forfeiture of copyhold eſtates, ſee poſt. Chap. V.

In what caſes acceptance of rent after forfeiture will be a waiver, and in what not, ſee poſt. Chap. VIII. § 5.

An eſtate may be forfeited

2. By waſte.

2. *By Waſte.*—An eſtate for years, life, &c. may be forfeited alſo by committing waſte.

And by ſtat. Glouc. 6 Ed. 1. *c.* 3. a tenant committing waſte ſhall forfeit not only the thing waſted, but alſo treble damages.

Waſte is defined to be a ſpoil or deſtruction in houſes, gardens, trees, or other corporeal hereditaments, to the injury of him that has the remainder or reverſion in fee-ſimple, or fee-tail; whatever therefore does a laſting damage to the freehold or inheritance, is waſte, whether it be done by the voluntary act of the party, as by pulling down houſes, &c. or be permitted only, as by ſuffering buildings to decay for want of neceſſary repairs. *Co. Lit.* 53.

Removing things affixed to the freehold.

Therefore tearing up floors, wainſcots, benches, doors, windows, walls, and whatever elſe is ſo fixed to the freehold as to become a part of it, is waſte. 4 *Rep.* 64. *Noy Max. c.* 14.

This rule is however not ſo ſtrict as it formerly was, and it has been held, that a tenant may during his term, remove chimney-pieces and wainſcot put up by himſelf—as alſo fixtures put up for the benefit of trade, as counters, ſhelves, brewing veſſels, cyder mills, &c. 1 *Atk.* 477. 1 *H. Blac. Rep.* 258. *Bull. Ni. Pri.* 34.

To diminiſh the number of fiſh in a pond, pigeons in a dove-houſe, rabbits in a warren, or the like, ſo as to reduce them below the ſtock neceſſary to be kept up for the purpoſe of breeding, is likewiſe waſte. *Co. Lit.* 53.

As alſo to cut down or lop timber trees, or trees likely to become timber, or otherwiſe to hinder the growth, or to pull up filberd trees, or willows, is waſte, as leſſening the value of the inheritance. But to cut down dead trees, though of the growth of timber, is no waſte. *Co. Lit.* 53. *Noy Max.* 4. Oak, aſh, and elm are reckoned timber in all places; and in particular counties ſuch other trees as are uſed for building are on that account deemed ſuch. *Noy Max.* 14. 4 *Rep.* 62.

Trees planted on a common by the lord, cannot be cut down by a commoner: though they be not timber, and though they may reduce the commonage, his proper mode being, if he is injured, an appeal to the laws by action. 6 *Term Rep.* 483.

But a tenant may, (as we have before obſerved) cut underwood at proper ſeaſons in the year, and take ſufficient wood for repairs, implements of huſbandry, and firing, without committing waſte, unleſs he is reſtrained from doing ſo by the terms of his leaſe.

Converting one ſpecies of land into another.

To convert one ſpecies of land into another is waſte, as to plough up and turn into tillage grounds which have uſually been paſture, or on the contrary to lay down and turn into paſture land which was before arable; for this is altering the deſcription of the eſtate, and making it vary from the title deeds, by which means the lord is in danger of loſing his inheritance; and for the ſame reaſon it is waſte to convert one ſpecies of building into another, even though it be improved in value. *Hob.* 296. 1 *Leo.* 309.

To open coal-pits, &c.

It is waſte to open coal-pits, mines, &c. becauſe it is depreciating the value of the inheritance.

But if they were open at the time the premiſes were demiſed to him, he may continue to work them for his own uſe, as they are then become a part of the annual produce of the land. *Hob.* 295. *Noy Max.* 87.

3. By non-payment of rent.

3. *By non-payment of rent*—for by 11 Geo. 2. *c.* 19. "If tenant at rack-rent, or where the rent reſerved is at leaſt three-fourths of the yearly value, ſhall be one year's rent in arrears, and ſhall deſert the demiſed premiſes, leaving the ſame uncultivated, or unoccupied, ſo that no ſufficient diſtreſs can be had, two juſtices of the peace (after

notice affixed to the premiſes 14 days before), may give the landlord poſſeſſion, and the leaſe ſhall be void." 5 *Co.* 12. 2 *Mod.* 193.—and ſee title *Ejectment*, Chap. VIII.

Obſervation.

We ſhall now proceed to make ſome obſervations on the uſeful head of *Agreements*; which, to have been ſtrictly methodical, ſhould, perhaps, have preceded ſome of the former diviſions; but we found it impoſſible to introduce it earlier, without too much diſconnecting the parts of the ſubjects we were treating of.—Therefore,

6. *Of Agreements relative to the Demiſe of Premiſes.*

Nature of an agreement.

An *agreement*, in the ordinary legal acceptation of the word, imports a memorandum or minute, containing the conſent of one perſon to part with, and of another to receive, ſome right, property, or advantage; and it is frequently made preparatory to a more formal contract.

Its requiſites.

It is evident that the firſt requiſite to a valid contract is, that there be a perſon capable in law of entering into an agreement—an object, about which an agreement may be lawfully made—and a perſon free from the diſability of accepting or agreeing to ſuch object.

As to the legality of the contract (as referable to our preſent ſubject) it has been held that no action can be maintained on an agreement for premiſes let to a lady of eaſy virtue, for the avowed purpoſe of proſtitution, the tendency of ſuch an agreement being ſubverſive of morality. 1 *Eſp. Ca.* 13.

Who are capable of agreement.

An agreement being an act of the mind, it follows that none but thoſe capable of exerciſing the faculty of thinking can bind themſelves by any contract; conſequently a perſon of deranged underſtanding cannot enter into an agreement. 1 *Bac. Abr.* 67.

Upon the ſame principle infants (*viz.* perſons under the age of 21 years) are incapable of binding themſelves to any agreement to their diſadvantage; perſons under that age being ſuppoſed to want ſufficient diſcretion to act with proper judgment, and are therefore under the protection of the law. *Ibid.*

But an agreement entered into by an infant to accept a leaſe for years will make him liable to an action for the rent, even during his under-age, provided he take poſſeſſion accordingly, and the rent reſerved be reaſonable; for it will be intended to be for his benefit. 2 *Bull.* 69.

So where it appeared to be for the good of the infant, the Court of Chancery has decreed the allowance of building-leaſes made for a term of 60 years. 2 *Vern.* 224.

Note—See further as to perſons incapable of entering into agreements reſpecting land, *ante*, p. 10. where the obſervations made on the ſubject of *leaſes*, are equally applicable to that of *agreements*.

How agreements are to be made; ſhould be explicit;

Agreements ought to be perfect, full, and complete, ſo as to ſhew with preciſion what is meant to be ſtipulated, and the mutual conſent of the parties thereto, that an action may be maintained upon them if neceſſary.

ſhould provide for failure;

It ſhould alſo provide for the poſſibility of a failure in either of the parties, which is uſually done by annexing a penalty for non-performance; and it is adviſeable to ſtipulate expreſsly, that the party failing in performance ſhall reimburſe the other party all expences which he ſhall be put to on that account.

and be in writing.

By the ſtatute of frauds, 29 *Car.* 2. *c.* 3. (ſee *ante*, p. 12.) all agreements reſpecting land, except for leaſes not exceeding 3 years, muſt be in writing and ſigned by the parties.

A *parol* agreement therefore to demiſe lands for any term of years, will create an eſtate at *will* only. 4 *Term Rep.* 680—but though ſuch an agreement is void as to the duration of the demiſe, it will be good in reſpect of other matters not affected by the ſtatute, as the reſervation of rent, &c. 5 *Ibid.* 472.

Both parties ought properly to execute the agreement; though if it be executed by one of them only it will be valid, provided the other party is ſo circumſtanced as that there may be a mutual remedy. 1 *Eq. Ca. Ab.* 21.

And on this principle the *draft* only of an agreement and ſigned by one of the parties only, was held to be binding in equity, and *Eyre*, Ch. Juſt. obſerved, that the agreement beginning I *James Crockford*, in that gentleman's own hand writing, was a ſufficient ſigning within the ſtatute. *Eſp. Ca.* 191, and ſee 2 *Anſtr.* 420.

Conſtruction of ſtatute of frauds.

Indeed the object of the above ſtatute being avowedly for the prevention of frauds and perjuries, the Courts have in general conſtrued it favourably in all caſes where that object is not endangered; and conformably to this rule they have in two caſes held argeements to be good, though reſting ſingly on *parol*, *viz.* where they are admitted by the party who is to perform them, and where to enforce the ſtatute *literally* would in effect be counteracting its ſpirit: as if an agreement be intended to be put into writing, but prevented by the fraudulent practice of one of the parties. 1 *Eq. Ca. Abr.* 21.

Need not expreſs a conſideration.

When an agreement is in writing, the conſideration is not enquirable into, for it ſhall be intended to be executed on good conſideration. *Plow.* 308.

But (as mentioned in page 34) if the contract upon which it is founded, appear to be illicit and contrary to morality, no action can be maintained upon it.

The ſtatute relates only to lands, but if the agreement be void as to the land, it will in general be void in reſpect of any other collateral matter it may contain. 2 *Anſtr.* 420. *Ibid.* 424, n (*)

Caſes in reſpect to agreements.

It has been adjudged that an *agreement* to grant a leaſe at a future period, accompanied with words of preſent contract, as that "the leſſor doth hereby demiſe, &c." ſhall be good as a *preſent leaſe*, if it were intended ſo to be by the parties. 2 *Black. Rep.* 973. But it would be otherwiſe if no ſuch intention appeared. 1 *Term Rep.* 735. 2 *Ibid.* 739.

Words importing an agreement will amount to a covenant, upon which an action of covenant may be maintained. 1 *Roll. Abr.* 518. As will alſo the recital of an agreement at the beginning of the deed. 1 *Leon.* 122. 3 *Keb.* 465.

II. *Of an Eſtate at Will.*

An eſtate at will defined.

A ſecond ſpecies of eſtates leſs than freehold is an eſtate at *will*. This is where lands or tenements are let by one man to another, to hold at the will (or during the pleaſure) of the leſſor. *Lit.* § 68;—or, in the words of a more modern writer, where one enters and enjoys the land by the expreſs or implied conſent of the owner, without there being any obligation, either on the part of the leſſor or leſſee, to continue it for any certain or determinate time. *Butler*, note. *Co. Lit.* 55.

And per *De Grey*, Juſt. all leaſes for uncertain periods are *prima facie* eſtates at will; and it is the reſervation of an annual rent that turns them into eſtates from year to year. 2 *Black. Rep.* 1173.

This is ſo precarious a tenure, and attended with ſo many inconveniencies, that it is very ſeldom granted; and the courts have, of late years, very properly, diſcountenanced it as much as poſſible, by conſtruing it, whenever they can, to be a tenancy from *year* to *year*.

Incidents to this eſtate.

But though this eſtate is ſaid to be held at the will of the *leſſor*, yet it is in fact at the will of both parties, and may be determined at either of their options, *Co. Lit.* 55, except by the cuſtom of *London*, where a tenant at will is entitled to a quarter's notice to quit, if his rent be under 40s. a year, and to half a year's notice if it be above 40s. *Siderf.* 20.

And in other caſes the rule is to be underſtood with ſome reſtrictions, for the law will not ſuffer any ſudden determination of the will of one party to operate to the material injury of the other.

So that if a tenant at will ſow his land, and the landlord determine the eſtate before the corn be ripe, the tenant ſhall nevertheleſs have free liberty to enter upon the land and cut and carry away his crop; the landlord would otherwiſe be benefited by his own iniquity, which is contrary to a maxim of law, *that no man ſhall take advantage of his own wrong*.

And on a like principle of juſtice, the leſſee ſhall in all caſes have reaſonable time allowed him to remove his goods, &c. after the determination of his eſtate by the *act of the leſſor*. *Lit.* § 69. *Noy Max. c.* 11.

But in the caſe of emblements before mentioned, if the leſſee, by forfeiture or otherwiſe, determine his eſtate by his *own act*, he ſhall not be entitled to them, becauſe it is by his own default that he ſuffers. *Ibid.*

And ſo if the *leſſee* determine the will between the quarter-days, he ſhall pay rent up to the end of the quarter; and on the other hand, if the *leſſor* determine the will between the quarters he ſhall have rent only up to the laſt quarter. *Salk.* 414. *Ibid.* 222.

How an eſtate at will may be determined.

An eſtate at will may be determined by the expreſs declaration of either party, or by implication of law.

By expreſs declaration.

An expreſs declaration by the leſſor is where the leſſor, or ſome other perſon authoriſed by him, enters upon the land, and ſays, "I here enter and take poſſeſſion of my

land," or the like; and he may afterwards cut a twig, or a piece of turf by way of ſymbol. *Lil. Conv.* 310. and *note*, that of all this there ought to be at leaſt two witneſſes, who, to preſerve their teſtimony, ſhould ſign a memorandum of the tranſaction.

Or by implication of law.

An *implied* determination may be by entry upon the land in the abſence of the leſſee, with an intent to determine the will, or by exerciſing an act of ownerſhip over the land, as by digging the ſoil, cutting wood, and the like: by granting a leaſe thereof to commence immediately; by diſtraining for rent; by the death of the leſſor or leſſee; or the marriage of a woman leſſee. But ſince eſtates at will have been conſtrued as beneficially as poſſible for the leſſor, it has been held, that in caſe of the *leſſor*'s death the leſſee cannot be ejected without ſix months notice given him by the repreſentatives of the leſſee. 2 *Term Rep.* 159. and that if the *leſſee* die, his repreſentatives may hold poſſeſſion till the like notice given. 3 *Wilſ.* 25. An act of high treaſon has alſo been held to be an implied determination of the will. *Co. Lit.* 55. b. 2 *Liv.* 88. *Noy Max. c.* 11. 1 *Wilſ.* 176..

The eſtate may alſo be determined by the leſſee's committing waſte, or by aſſigning the premiſes over; or in ſhort by his doing any act which is inconſiſtent with the nature of his eſtate.

As to the notice to quit requiſite to be given to tenants at will, ſee Chap. VII.

And the mode of recovering rent of tenants at will, Chap. VIII.

III. *Of an Eſtate by Sufferance.*

Eſtates by ſufferance defined.

An eſtate by *ſufferance* is where a perſon having poſſeſſion of lands or tenements by lawful demiſe, continues in poſſeſſion thereof after his eſtate is ended; as, if a leſſee for years holds over after the expiration of his term. *Co. Lit.* 57. b.

And where the leaſe is expired, the former leſſee (though he may have underlet the premiſes) ſtill continues tenant, and liable for the rent, unleſs he delivers up poſſeſſion, or the landlord accept another in his room. 1 *Eſp. Ca.* 57.

This eſtate is now very unuſual unleſs with the conſent of the landlord, for by ſtat. 4 Geo. 2. *c.* 28. tenants at ſufferance who hold againſt the landlord's conſent are put

upon the ſame footing with reſpect to the payment of double rent and double value, after notice given them to quit, as we before obſerved of tenants for years. *Note*—The double *rent* given by this ſtatute may be recovered by *diſtreſs* as ſingle rent; but double the improved *value* can be recovered by *action of debt* only. 1 *Black. Rep.* 535.

If a landlord accept rent of a tenant after the expiration of his leaſe, or does any other act by which he ſhews his conſent that the tenant ſhould continue poſſeſſion, he converts the eſtate into a tenancy from year to year. *Co. Lit.* 57. b.

This eſtate by ſufferance, as we before obſerved, is now become ſo unfrequent, owing to the laſt-mentioned act and other inconveniences attending it, that, ſhort as we have been in our obſervations upon it, we imagine we ſhall be thought ſufficiently copious.

CHAP. V.

OF COPYHOLD ESTATES.

Copyhold eſtate, what.

A Copyhold tenure, or a tenure by copy of court roll, is an eſtate held at the will of the lord, according to the cuſtom of the manor in which it lies. This eſtate was formerly held *abſolutely* at the lord's will, and as precarious in its duration, (if not more ſo) as that of *tenant at will* mentioned in a former chapter: but though it is ſtill, in truth, held at the will of the lord, and is ſo expreſſed to be in the court rolls, yet that *will* from length of time, and the indulgence of particular lords, is now ſo limited and reſtrained by the cuſtom of the manor, that it is no longer arbitrary or precarious, but fixed and eſtabliſhed by the cuſtom to be the ſame, and no other than that which time out of mind has been invariably exerciſed; ſo that copyholders have now as permanent a property in their lands as the lord himſelf, and, when copyholds of inheritance with a fine certain, an eſtate ſcarcely

inferior in point of intereſt, and in many reſpects, (particularly in the ſecurity of their title, by reaſon of their admiſſions being recorded in the manor court), ſuperior to that of an abſolute freeholder: and if the lord ouſt his tenant contrary to the cuſtom, he may have an action of treſpaſs or ejectment. *Lit.* 5. 77. *Co. Lit.* 60. b. yet his eſtate is never in law conſidered as a freehold, becauſe the freehold of the whole manor always reſides in the lord. 1 *Bur.* 1543. 2 *Black. Com.* 147.

Copyholders may have various eſtates.

As the cuſtoms of different manors (by which copyhold eſtates are entirely and in all reſpects regulated) differ as much as the wills of their ancient holders, a copyholder may, if warranted by the cuſtom, have all thoſe various eſtates which we have enumerated in the preceding chapters, as an eſtate in *fee-ſimple*, *fee-tail*, *for life*, &c. and hold them united with his cuſtomary eſtate at will, liable to be determined, however, by committing ſuch acts, or by the happening of ſuch events, as the will of the lord (promulgated by the cuſtom) has declared to be a determination of the eſtate: theſe are in ſome manors the cutting down timber, in others the non-payment of the cuſtomary fines, in others the want of iſſue male, &c. &c.

The cuſtoms of different manors being ſo many and various, to enumerate them all were impoſſible; we muſt content ourſelves, therefore, with mentioning thoſe general cuſtoms only which extend to all copyhold eſtates, in whatever manor ſituated, and noticing the principal deciſions which have been made upon them by the courts. It may firſt however, be obſerved, that two main requiſites are held to be the ſupporters of the copyhold tenure, and without which it cannot exiſt; theſe are, 1. That the lands be parcel of and ſituated within the manor of which they are held. 2. That they have been demiſed or demiſeable by copy of court roll from time immemorial. *Co. Lit.* 58. b.

Requiſites to every copyhold.

The principal cuſtoms of copyholds in general.

Eſtovers.

By the general cuſtom of all manors, it ſeems that a copyholder is intitled to the eſtovers, or botes we have formerly ſpoken of, that is to ſay, houſe bote, cart-bote, and hay-bote; theſe he may take from the land without leave or aſſignment of the lord. 13 *Co.* 68, but ſee *Cro. Eliz.* 5. *Cowp.* 72.

Every copyholder may make a leaſe for one year certain, of his lands, without licence, and his leſſee may maintain an ejectment for the poſſeſſion. 9 *Co.* 75.

And by the cuſtom of moſt manors, copyholders of inheritance are permitted to grant leaſes for any other term not exceeding his own life. 1 *Leo.* 4. *Cro. Eliz.* 535, 676. *Co. Cop.* § 51. 4 *Co.* 26. a.

But he can in no caſe make a leaſe till after admittance. *Eſp.* 440—but where a copyhold was ſurrendered to one for life, with remainder to another in fee, the admittance of the tenant for life was held to be a ſufficient admittance of the reverſioner. *Cro. Jac.* 31.

Copyholds of inheritance deſcend to the heirs of the tenant according to the rules of the common law. 4 *Co.* 22. *Co. Cop.* 114, and an entry in the court roll of the manor, ſtating the mode of deſcent, is evidence of the cuſtomary deſcent. 5 *Term Rep.* 26.

But though in reſpect of *deſcents* copyholds are governed by the rules of the common law, yet they do not partake of the nature of freeholds in other reſpects; for they are not aſſets in the hands of the heir, nor ſhall a woman be endowed, or a man be tenant by the curteſy of a copyhold, unleſs by ſpecial cuſtom. 6 *Mod.* 64. 4 *Co.* 23.

And by *ſpecial cuſtom*, a deſcent may be contrary to the rules of the common law, but it will then be *ſtrictly* conſtrued; as, where there was a cuſtom that lands ſhould deſcend to the *eldeſt ſiſter*, if there be neither ſon nor daughter; this was held not to extend to an *eldeſt niece*. 1 *Term Rep.* 466.

Heriots, wardſhip, and fines are incident to moſt copyholds; heriots belong as well to copyholds for life, as to thoſe of inheritance, but wardſhip and fines to thoſe of inheritance only. 2 *Black Com.* 97.

Heriots are due to the lord, and become veſted in him as his property, immediately on the death of the tenant. In ſome places there is a cuſtomary compoſition in money in lieu of a heriot, by which the lord and tenant are both bound, and alſo their repreſentatives, if it be an *ancient* cuſtom; but a *new* compoſition of this ſort will not bind the *repreſentatives* of either party, becauſe no new cuſtom can now be created, as it is eſſential to a good cuſtom that it has exiſted *immemorially*. *Co. Cop.* § 31. 2 *Black Com.* 97. 422. Heriots.

Heriots, whether by ſervice or cuſtom, if due by ancient tenure, may be ſeized, though they be off the manor, but not if they be reſerved by deed. 1 *Show.* 81.

Where *wardſhip* prevails, the lord is the legal guardian, Wardſhips.

and accountable to his ward for the profits; he ſeldom, however, takes the guardianſhip into his own hands, but uſually aſſigns ſome relation of the infant to act in his ſtead. 1 *Show.* 81.

Fines.

As to *fines*, they are ſometimes arbitrary and at the will of the lord; ſometimes fixed by the cuſtom: ſome are due on the death of each tenant, and others on the alienation of the lands: but though *due*, on death or alienation, they are not *payable* till the admiſſion of the next tenant. 2 *Term Rep.* 484.

But where the fine on the deſcent or alienation of a copyhold is arbitrary, it is tied down to be *reaſonable* in its extent, and therefore two years improved value of the eſtate is the utmoſt allowed to be taken. 2 *Ch. Rep.* 134. *Doug.* 697, in which caſe it has been held, that the lord is not bound to make any deduction on account of land-tax. *Doug.* 724.

Recent determinations reſpecting fines on admiſſion.

In reſpect to the fine of a copyholder to be paid on admiſſion, the following determinations have recently occurred.

If a copyhold be granted to one for years, and he die during the term, his executor ſhall pay a fine on admittance, the fine being due on every change of tenant. 1 *Bur.* 206. 218.

One *groſs* fine cannot be aſſeſſed on the admiſſion to *ſeveral* tenements, but a ſeparate fine muſt be ſet upon each. *Doug.* 721.

Fines ſhall be according to the preſent improved value, and not according to the rent reſerved under a ſubſiſting leaſe granted by licence of the lord, becauſe otherwiſe the lord might be impoſed upon. *Stra.* 1042.

And by 9 Geo. 1. *c.* 29. "the fine impoſed on admittance of *infants* and *feme coverts* may be demanded by the bailiff, or agent of the lord, by a note in writing, ſigned by the lord or his ſteward, to be left with ſuch infant, or feme covert, or with the guardian of the infant or huſband of the feme covert, or with the occupier of the land to which ſuch admittance was made." And if ſuch fine be not paid, the lord may enter and receive the profits of the copyhold till he by ſatisfied. *Stra.* 1042; or if the guardian of the infant, or huſband of the feme covert, pay the fine, they may reimburſe themſelves out of the rents of the copyhold. *Ibid.*

And an action of *aſſumpſit* will lie after an infant comes of

age, for a fine impoſed during his infancy. 3 *Bur.* 1717. 1. *Ld. Raym.* 30.

If the lord of a manor refuſe to admit a ſurrenderee on account of a diſpute concerning the fine to be paid, the court will grant a mandamus to compel him, without examining the right to the fine, becauſe the fine is not due till admittance. *Cro. Car.* 196. 2 *Term Rep.* 484.

Other incidents to the copyhold tenure (beſides thoſe already noticed), as collected from the lateſt deciſions on the ſubject, are the following: Other incidents, &c. of copyholds.

Copyholds are not within the ſtatute of frauds and perjuries, and therefore will paſs by a will atteſted by only two witneſſes, or even one only. 2 *P. Wil.* 258. 2 *Brown Ch. Rep.* 58.

A recovery in Common Pleas may be good of cuſtomary freeholds, which paſs by ſurrender in a borough court, though it is not good of copyholds. 1 *Atk.* 474.

A woman is by the cuſtom of many manors entitled to her free-bench out of her huſband's copyholds; but this does not extend to all the lands he was ſeized of during the coverture, but to ſuch only as he *died ſeized of*. 2 *Atk.* 525. *Cowp.* 481.

A cuſtom of a manor delivered down with the court rolls from ſteward to ſteward time immemorial, is evidence to prove the courſe of deſcent, though not ſigned by any tenant. 1 *Term Rep.* 466.

It has been held that a copyholder, to hold to him and his heirs for 3 lives, without power of compelling the lord to renew on the falling in of the lives, cannot cut down timber growing on his eſtate. 2 *Ibid.* 766.

Copyholds ought to be always demiſed or demiſeable by copy of court roll; and they cannot be created by operation of law. *Co. Lit.* 58. 2 *Term Rep.* 415, 705.

Copyholds may, by ſpecial cuſtom, be entailed; and wherever the cuſtom allows a tenant to bar the eſtate-tail, it may be done by ſurrender. 2 *Atk.* 101. 2 *Vez.* 596. *Amb.* 279. But *Willes*, C. J. thought recovery the moſt proper mode. 2 *Vez.* 603.

We ſhall now ſay a few words concerning the mode of conveying copyholds from one man to another, at the ſame time noticing the principal reſolutions of the courts on that head; and conclude our remarks upon copyhold tenure by ſome obſervations on the means by which the intereſt of a copyholder may be deſtroyed. The mode of conveying copyholds.

By ſurrender.

The moſt general mode of conveying copyholds is by *ſurrender*. A ſurrender is the yielding up of the tenant's eſtate into the hands of the lord, for ſuch purpoſes as in the ſurrender are expreſſed. This is done by the tenant's reſigning (either in the manor court, or out of it, according to the cuſtom, by the delivery of a rod or other ſymbol) all his intereſt and title to the eſtate into the hands of the lord, by the hands and acceptance of his ſteward; or ſometimes by the acceptance of two cuſtomary tenants of the manor, in truſt to be granted out again by the lord to ſuch perſons, and to ſuch uſes, as are mentioned in the ſurrender. And if the uſes be indorſed on the back of the ſurrender, and ſigned by the ſteward, it is ſufficient, though they be not mentioned in the rolls. 3 *Atk.* 73.

Note, Where a ſteward's authority is *ordinary and neceſſary*, as in this caſe, and not of a *judicial* kind, the Courts are not particular in enquiring into the regularity of his appointment; on this principle a ſteward *de facto*, or in other words a *nominal* ſteward, has been held to be ſufficient.

Immediately upon ſuch ſurrender made, the lord by his ſteward grants the eſtate to the ſurrenderee, and admits him to hold by the ancient rents and cuſtomary ſervices, according to the form and effect of the ſurrender, which muſt be exactly purſued. On this grant and admiſſion it is that the fine we have before ſpoken of is paid.

"This method of conveyance," Sir William Blackſtone obſerves, (2 vol. *Com.* 367.) "is ſo eſſential to a "copyhold eſtate, that it cannot properly be transferred "by any other aſſurance. No feoffment or grant has "any operation thereupon. If I would exchange a co"pyhold eſtate with another, I cannot do it by any or"dinary deed of exchange at the common law, but we "muſt ſurrender to each other's uſe, and the lord will "admit us accordingly. If I would deviſe a copyhold, "I muſt ſurrender it to the uſe of my laſt will and teſ"tament; and in my will I muſt declare my intentions, "and name a deviſee, who will then be entitled to ad"miſſion."

But equity will ſupply the want of a ſurrender of a copyhold, if it be deviſed for the payment of debts, or to a wife and younger children unprovided for. 1 *Brown Rep.* 273. 2 *Ibid.* 325. 3 *P. Wil.* 96, 322, 283. This rule however, does not extend to grand-children. 2 *P.*

Wil. 61. 3 *Atk.* 189, nor to natural children, brothers, or couſins. 2 *Veſ.* 582. 3 *Atk.* 189.

In order to give the reader as clear an idea as poſſible of this peculiar ſpecies of aſſurance, we ſhall take a ſeparate view of its ſeveral parts, viz. of the *ſurrender*, the *preſentment*, and the *admittance*.

The *ſurrender*, though defined to be a yielding up of the copyholder's eſtate into the hands of the lord for the purpoſes therein mentioned, does not transfer any immediate poſſeſſionary intereſt to the nominee; it is little more of itſelf than a declaration of the ſurrenderor's intention, and the *legal* eſtate does not veſt till after *admittance*, till when the ſurrenderor continues tenant of the eſtate, and muſt perform all the cuſtomary ſervices due to the lord. He is, however, conſidered as a truſtee for the ſurrenderee, and cannot afterwards revoke his grant, or make any other diſpoſal of the eſtates ſurrendered; on the other hand, the ſurrenderee is entitled to the rents and profits from the time of the ſurrender, and may at any time, by bill in chancery or mandamus, compel the lord to admit him in purſuance thereof. 2 *Rol. Rep.* 107. *Co. Cop.* § 39. 1 *Term Rep.* 600.

And after ſurrender made, the admittance is held to relate back to that period, ſo that the ſurrenderee may recover on a demiſe laid between the time of ſurrender and admittance. 1 *Term Rep.* 600.

The *preſentment* is when the ſurrender has been made *out of court*. In this caſe the jury or homage muſt at the next or ſome ſubſequent court, according to the cuſtom, preſent, or find it upon their oaths; which preſentment is an information to the lord or his ſteward of what has been tranſacted out of court. It muſt be brought into court by the ſame perſons as took the ſurrender, if living, and muſt in all eſſential points agree with the ſurrender: preſentment may be made, notwithſtanding the death of the nominee, and his heir by the cuſtom ſhall be admitted, and in all caſes of refuſal to make preſentment by the perſons into whoſe hands the ſurrender was made, they may be compelled by petition to the lord in his court baron, and if he refuſe to do juſtice, relief may be found in Chancery. *Co. Cop.* § 40. Preſentment.

Admittance is the laſt ſtage or perfection of copyhold aſſurances, and is made either in purſuance of a ſurrender of the former tenant, or in conſequence of a deſcent from the anceſtor to the heir. In either caſe the lord is con- Admittance.

ſidered as a mere agent or inſtrument, to whom no intereſt paſſes by the ſurrender, and from whom, conſequently, none paſſes by the act of admittance. It is immaterial, therefore, as to the *validity* of the admittance, whether the lord's title be good or bad, ſince he is *officialy*, as it were, *obliged* to admit the nominee properly preſented. There is a difference, however, between admittances on ſurrender, and thoſe on deſcent; for by ſurrender, as we have obſerved before, nothing is *veſted* in the *ſurrenderee* till admittance; but when the *heir* takes by *deſcent*, he is to moſt purpoſes completely tenant *immediately* on the death of his anceſtor: he may enter and receive the profits, and (after payment of his admiſſion fine) may ſurrender his eſtate to another's uſe. 4 *Co.* 23. 2 *Term Rep.* 197. He is nevertheleſs *obliged* to be admitted within a ſhort time after his anceſtor's death, or elſe by the *cuſtom* of every manor he will forfeit either the copyhold itſelf, or ſome pecuniary penalty. *Co. Cop.* § 41. And a tenant cannot be ſworn on the homage, or bring an action againſt his lord till admittance.

By Stat. 9 *Geo.* 1. c. 29. § 1. *Infants and feme coverts* being entitled by deſcent or by ſurrender to the uſe of a will, to be admitted to any copyhold, may, in their proper perſons, or a feme covert by attorney, and an infant by his guardian, or if he have no guardian, by his attorney, appear in one of the three next courts for the manor, of which the copyhold premiſes are parcel, and offer themſelves to the lord or his ſteward to be admitted tenants.

Determinations relative to ſurrenders and admiſſions.

In reſpect to the ſurrenders and admiſſions of copyholders, the following determinations principally deſerve our notice.

Where a copyhold is ſettled on one for life, with remainder to another in fee, the admittance of the tenant for life is held to be an admiſſion of the reverſioner, ſo that no new admiſſion is neceſſary on the tenant's death, as both make but one eſtate. *Cro. Jac.* 31.

And when admiſſion is had, it relates back to the time of ſurrender, and renders valid any intermediate act. 1 *Term Rep.* 600.

A man may ſurrender a copyhold eſtate to the uſe of his wife, notwithſtanding the rule of law, that man and wife being but one perſon, cannot contract; for the eſtate is firſt given to the lord, *from whom* the wife takes it as an inſtrument to convey the eſtate to her. 4 *Co.* 29. *Sty.* 145.

A feme covert cannot ſurrender her copyhold without the conſent of her huſband, nor will any cuſtom that ſhe ſhall, be good; it being contrary to law and the policy of nations, and if admitted would tend to make wives independent of their huſbands. 2 *Wilſ.* 1.

But a feme covert ſeparated from her huſband, may, under a covenant that ſhe ſhall enjoy whatever property ſhall deſcend to her, ſurrender without her huſband a copyhold deſcended to her after ſeparation, without any ſpecial cuſtom. *Black. Rep.* 344.

The ſurrender of a copyhold to the uſe of a will, does not veſt the eſtate in the appointee dying in the life-time of the teſtator. 2 *Vez.* 77.

Nor will it apply to a will made previous to the ſurrender, becauſe the will extends only to the eſtates the teſtator was ſeized of at the time of making it. *Amb.* 299.

And ſo of the ſurrender itſelf; it applies only to the lands which the ſurrenderor had at the time of the ſurrender. 6 *Term. Rep.* 63.

No ſurrender is neceſſary to paſs an equity of redemption. 2 *Atk.* 37.

A copyhold ſurrendered to the uſe of a man's will, was held to paſs by the deſcription of all his *real* eſtate, where it appeared to be the teſtator's intention that it ſhould. 2 *Vez.* 164.

A ſurrender made to a woman when ſole, is ſuſpended, if not revoked, by her marriage; becauſe by the marriage the ſurrender becomes fluctuating and ambulatory, till ſome further legal act be done to complete it. *Amb.* 628.

The ſame conſtruction muſt take place in ſurrenders as in other law conveyances; and it is not ſufficient (as in wills) that the intention of the parties was otherwiſe. Therefore, where a copyhold was ſurrendered to the uſe of huſband and wife for their lives, remainder to their heirs and aſſigns, remainder to the right heirs of *A.* the huſband and wife were held to have an eſtate in fee, and not an eſtate-tail. 1 *P. Wil.* 71. *& vid.* 2 *Atk.* 101. *3d. Ib.* 11. and 1 *Show.* 285.

The ſurrenderor is conſidered as a truſtee for the ſurrenderee till admittance; and the ſurrenderee may maintain an ejectment before admittance; for the courts will not ſuffer a truſtee to ſet up an objection againſt his ceſtui que truſt. 1 *Term. Rep.* 600.

The court will not grant a *mandamus* to compel the lord

to admit a copyholder by deſcent, becauſe he has a complete title before admittance againſt all the world but the lord. 2 *Term Rep.* 189.

We now proceed to our remarks on the *forfeiture* of copyholds.

How copyholds may be forfeited.

A copyhold eſtate may be forfeited by committing treaſon, or felony; by alienation by deed; by committing waſte, either voluntary or permiſſive; by denying or withholding the cuſtomary ſervices; by refuſing to pay the cuſtomary fine; by diſclaiming to hold of the lord; by neglecting to be admitted tenant within a year and a day, and a variety of other acts or omiſſions peculiar to each manor. *Lit.* § 71. *Ow.* 17. *Rol.* 506. *Dy.* 211. *Co. Cop.* § 57. 8 *Co.* 99. In none of theſe caſes, however, does the forfeiture accrue, till after the offence is preſented by the homage or jury of the lord's court. *Co. Cop.* § 58.

Copyholds are forfeited by alienation by *deed*, and if it be by *fine*, *recovery*, or feoffment with livery, (which diveſt the eſtate) it is an abſolute and immediate forfeiture, and if by a leaſe for years, it is a forfeiture, on the lord's taking advantage thereof by entry; theſe acts being contrary to the nature and exiſtence of the copyholder's eſtate, who, as we have obſerved, is in law deemed no more than a tenant at the will of his lord. *Co. Lit.* 59. a.

A leaſe for *one* year only, is however held not to be a forfeiture, ſuch leaſe by a copyholder, Sir Edward Coke obſerves, being warranted by the *general* cuſtom of the realm. 4 *Co.* 26.

Waſte is another cauſe of forfeiture in copyhold eſtates, and that whether it be *voluntary* or *permiſſive* only. But in this latter caſe, a Court of Equity will in general give relief to compel the lord to re-admit the tenant, on being tendered ſatisfaction for the injury ſuſtained. *Prec. Chan.* 568. *(as to what acts are deemed waſte, ſee* ante p. 32.)

By the cuſtom of moſt manors, it is alſo a forfeiture to neglect to be admitted, and pay the fine due to the lord, after three proclamations made. But this will be no forfeiture without a ſpecial cuſtom to warrant it. 8 *Co.* 99. 3 *Term Rep.* 170.

The lord may however ſeize the eſtate till the tenant come and pay his fine; but he muſt declare, that it is on that account he retains it, or it will be conſtrued to be an abſolute ſeizure. 3 *Term Rep.* 170.

And if the lord would take advantage of the non-pay-

ment of a fine uncertain, he muſt ſet a reaſonable fine, and prefix a day and place within the manor for payment of it, otherwiſe the non-payment is not a forfeiture.

By Stat. 9 Geo. 1. c. 29. it is provided, that no *infant* or *feme covert* ſhall forfeit any copyhold by neglecting or refuſing to be admitted, or to pay the cuſtomary fine. 9 Geo. I. c. 29.

The lord for the time being, and no other lord, ſhall take advantage of forfeiture, except in thoſe caſes only where the act of forfeiture deſtroys the eſtate. 3 *Term Rep.* 173.

Though a copyhold tenant for *life* ſurrender to the uſe of another *in fee*, it is no forfeiture, becauſe the court rolls will always ſhew who is tenant; therefore the reverſioner's eſtate is in no danger. 1 *Term Rep.* 466.

And in all theſe caſes of forfeiture, the lord may recover his copyhold by ejectment. *Eſp. Ni. Pri.* 440.

If after committing ſuch a forfeiture as may be waived, the lord do any act which may ſeem to amount to a waiver, as, if he admit a preſentation that the tenant died ſeized, and proclaim for his heir to come in, &c. it ſhall be a diſpenſation of the forfeiture. 3 *Term Rep.* 171, 471.

CHAP. VI.

OF ESTATES IN SEVERALTY, JOINT-TENANCY, COPARCENARY, AND COMMON.

ALL the eſtates of which we have treated in the preceding chapters, may be held in four different ways; in ſeveralty, in joint-tenancy, in coparcenary, and in common.

A tenant in *ſeveralty* is he that holds lands, &c. in his ſole right, without having any other perſon partaking with him in the intereſt of his eſtate: this is the moſt uſual manner of holding an eſtate, and that to which all our preceding rules and obſervations were intended to apply. Tenant in ſeveralty.

Joint-tenancy.

An eſtate in *joint-tenancy* is where lands or tenements are granted to *two or more* perſons to hold in fee-ſimple, fee-tail, for life, for years, or at will. The grand incident to this eſtate is, that on the death of one of the tenants, the whole intereſt devolves on the ſurvivor.

Tenant in Coparcenary.

An eſtate in *coparcenary* is where lands of inheritance *deſcend* from the anceſtor to two or more perſons.

Tenant in common.

A tenant *in common* is where two or more perſons hold the ſame eſtate by different titles; as, if a joint-tenant grant his part of the eſtate to another, the grantee and the other joint-tenant will hold as tenants in common.

Obſervation.

We have thought it neceſſary, for the ſake of method, juſt to enumerate theſe ſeveral eſtates, but to enter at large into their different properties and peculiarities, would be entirely foreign to our preſent purpoſe, and we apprehend altogether uſeleſs to our readers; we ſhall, therefore, proceed to ſuch remaining parts of our ſubject, as we conceive to be of more general utility. Thoſe, however, who wiſh for farther information concerning theſe eſtates, will meet with ample ſatisfaction by conſulting *Coke's* firſt Inſtitutes, *Lilly's* Practical Conveyancer, and the 2d vol. of the Commentaries of *Blackſtone*.

CHAP. VII.

OF NOTICE TO QUIT.

WE formerly obſerved, in ſpeaking of eſtates at will, that the law would not ſuffer ſuch a ſudden determination of the tenancy, by either landlord or tenant, as might tend to the manifeſt and unforeſeen prejudice of the other party, and that partly upon this principle the courts had of late years leaned as much as poſſible towards conſtruing demiſes for an *uncertain* period to be held from *year to year*, in which caſe, neither party can determine the tenancy without *reaſonable* notice to the other. What length of time has been conſidered under different circumſtances, to be *reaſonable* notice, we now purpoſe to enquire.

Where notice neceſſary, and where not.

And we may firſt obſerve, that notice is neceſſary only where the duration of the eſtate is fixed to no certain or predetermined time, but depends upon the pleaſure of the parties, or ſome other *uncertain* event; as where it is holden for the life of another; from year to year; as long as the parties ſhall agree, &c. for where it is by leaſe for a *certain term*, the tenant may be ejected at the end of ſuch term, without any previous notice to quit, for at the expiration of his term, the tenancy is determined *as of courſe*, unleſs a freſh agreement be entered into. 1 *Term Rep.* 162. But it has been ſaid, that in order to charge a tenant with double rent in purſuance of 4 Geo. 2. *c.* 28. in caſe he ſhould hold over after the end of his leaſe, he muſt be apprized that he will be expected to quit at the expiration of his term. 1 *Term Rep.* 53.

And if the tenant have done any act which amounts to a renunciation of his tenancy, as attorning to a ſtranger, or controverting his landlord's title, he may be ejected without any previous notice (as may his executor, in caſe of his deceaſe), becauſe he has himſelf determined his eſtate. 3 *Wilſ.* 25. *Cowp.* 622. 2 *Bro.* 161.

But in all caſes where the eſtate is determinable at the will of either party, or at any other undetermined or uncertain period, the tenant cannot be ejected till *half a year's* notice has been given him to leave the premiſes: and ſuch notice muſt expire at the ſame time of the year as that on which the tenancy commenced; as, if a demiſe be from *Midſummer* to *Midſummer*, the notice to quit muſt be given at *Chriſtmas*, ſo as to expire at *Midſummer*. 1 *Term. Rep.* 54, 159, 163. 3 *Wilſ.* 21, and ſee 2 *Black. Rep.* 1224.

And in an eſtate at will, it has been held, that in caſe of the death of the leſſor, his repreſentatives muſt give ſix months notice to the tenant before he can be evicted. 2 *Term Rep.* 159, and likewiſe, that if a leſſee at will die, his repreſentatives may continue in poſſeſſion till the like notice given. 3 *Wilſ.* 25.

But where a tenancy commenced previous to a mortgage or grant of the premiſes by the landlord, it was held to be immaterial when notice given by the grantee or mortgagee expired, it not being neceſſary in this caſe that the notice be made to expire at the time the tenancy commenced, as the mortgagee or grantee are not ſuppoſed to know when that was. 1 *Term Rep.* 380.

Nor is any notice neceſſary from a mortgagee who

means only to get into receipt of the rents and profits without turning the tenant out of poſſeſſion. *Doug.* 21.

Leſſor and leſſee *at will.*

A queſtion aroſe as to what notice it was neceſſary for a *leſſor at will* to give to a *leſſee at will* of *land*, before he could bring an ejectment, and it was unanimouſly held at a meeting of eleven judges, that *half a year's* notice muſt be given, and that the ſame notice was neceſſary as to *houſes* let at will, unleſs ſome other cuſtom prevail in the diſtrict where the houſe is ſituated, and ſuch notice muſt expire at the end of the year, computing from the time the tenancy commenced. 1 *Term Rep.* 54. & ſee *id.* 162.

A relaxation however, has in ſome caſes been admitted to the ſtrictneſs of this rule, as where notice was given on the 30th September, (being the *day after* Michaelmas-day) to quit on the *Lady-day* following, it was ruled by *Heath*, Juſt. to be a good notice. *Eſp. Ni. Pri.* 460.

And ſo too where the nature of the agreement or tenancy implies, or the cuſtom of the country ſanctions a departure from the rule—ſee 2 *Blac. Rep.* 1224. Thus by the cuſtom of *London*, a tenant under the yearly rent of 40s. is entitled to a *quarter's* notice only to quit, but tenant above that rent to half a year. 1 *Skin.* 649, and twelve months or three months only will be the proper notice, if ſuch be the cuſtom of the place. 3 *Bur.* 1609. *Peake's Ca.* 5.

Infant.

The ſame notice is required from an infant under 21, who becomes entitled to the reverſion of rents let from year to year, as from the original leſſor. 2 *Term Rep.* 159.

And ſo in a caſe where there was an agreement between landlord and tenant, that the tenant ſhould hold during the landlord's life, on condition that the landlord's ſon ſhould be at liberty to take the premiſes on his coming of age; it was held that the infant muſt give reaſonable notice, when of age, of his intention, and could not evict the tenant after a year's delay. 2 *Term Rep.* 436.

And it has been ſaid, that if the landlord, from ignorance as to when the tenancy commenced, ſerve notice on his tenant ending at a wrong time of the year, the tenant muſt inform him of ſuch irregularity, or it will be a waiver of it. *Eſp. Ni. Pri.* 461, but ſee 4 *Term Rep.* 361, where it is ſaid, that the inſufficiency of the notice may be inſiſted on at the trial, though no objection was made to it when given.

Lodgings, taken for a ſhort period, are an exception to the rule we have laid down, that notice muſt expire on the quarter-day whereon the tenancy began. Theſe depend either upon the expreſs agreement between the parties, or the particular circumſtances of the caſe, as the length of time for which they are taken, &c. if for leſs than a year certain, any *reaſonable* notice is held to be ſufficient. 1 *Term Rep.* 163. What is *reaſonable* notice, muſt, in caſe of diſpute between the parties, be decided by a jury. In London, if no particular notice is mentioned, I believe it is generally underſtood, that a week's notice ſhall be given, if the apartments are taken *by the week*; a month's notice, if taken *by the month*; and a *quarter's* notice, if taken by the *quarter*; and this rule (if ſuch it be) appears to be ſanctioned by a late caſe of *Parry* v. *Hazell*, in which it was agreed, that "notice had reference in all caſes to the letting," unleſs controuled by the expreſs agreement of the parties—ſee 1 *Eſp. Ca.* 94. Lodgings.

And in a ſtill later caſe, *ib.* 266, it was ruled by *Kenyon*, Ch. Juſ. that where the tenant had given *three* months notice only, to quit, (where *ſix* was ſtrictly neceſſary) and the landlord had not *expreſsly* objected to it, his ſilence in this reſpect was an acquieſcence in the validity of the notice, and therefore bound him to accept it.

But if the lodgings be taken for a week, or month, or any other *time certain*, no notice at all is expected, it being neceſſarily implied, that when the period for which they were taken be up, the tenant is to depart, unleſs he enter into ſome freſh agreement.

A ſecond notice to quit *or* pay double rent, after the expiration of a former notice, has been held to be no waiver of the firſt notice, or of the double rent accrued by it. *Doug.* 175. 167. Second notice.

But notice to quit is in general waived by the receipt of rent due ſubſequent to ſuch notice. 1 *H. Blac. Rep.* 311. 6 *Term Rep.* 219—*but of this ſee more poſt*, *Title* Rents.

Notice which is not good for one year, will not be good for the next, as it will be preſumed to be withdrawn. 1 *Bro.* 161. Void notice.

If there be tenant from year to year, and the landlord mortgages the premiſes during the year, the tenant is entitled to 6 months notice to quit from the mortgagee. *Doug.* 21.

Generally ſpeaking, where notice is required by law to be given to any party, leaving it at his dwelling-houſe is ſufficient. 4 *Term Rep.* 465; and where tenant of an How notice to be ſerved.

eſtate holden by the year has a dwelling-houſe at another place, the delivery of notice to his ſervant at his *dwelling-houſe*, is ſtrong preſumptive evidence that his maſter received it, and it will be left to the jury to ſay whether he did or not. *Ibid.* 464.

Double rent on refuſing to quit;

By 11 Geo. 2. *c.* 19. If any tenant ſhall give notice to quit poſſeſſion of premiſes demiſed to him, and ſhall not quit them accordingly at the time in ſuch notice mentioned, he, his executors, or adminiſtrators, ſhall pay double the reſerved *rent* for ſo long time as he ſhall continue poſſeſſion after ſuch notice given.

and double value.

And by 4 Geo. 2. *c.* 28. If any tenant for life or years, or other perſon claiming under him, ſhall hold over after the determination of his term, *notice in writing* being given for delivering up poſſeſſion, he ſhall pay double the yearly *value* of the premiſes he ſhall ſo refuſe to deliver up.

As to holding over by guardians or truſtees of infants, huſbands ſeized in right of their wives, and all others having particular eſtates determinable on a life or lives, ſee 6 *An*, *c.* 18. § 1.

Parol notice.

A *parol* notice to quit by a tenant, on a *parol demiſe*, is good notice, and within the meaning of this ſtatute. 3 *Burr.*, 1603, and it has been ſaid to be the ſame, though the demiſe be in writing. *Ibid.*

Where notice not neceſſary.

But no notice is neceſſary where the tenant has attorned to ſome other perſon, or done any other act diſclaiming to hold of his landlord. *Eſp. Ni. Pri.* 462.

And it is ſaid, that no notice is neceſſary where the tenant is in poſſeſſion under a *void* demiſe. *Ibid.* 463.

Notice to quit at any particular feaſt-day, is preſumptive evidence of holding from that time, and puts the other party upon proving the contrary. 2 *Black Rep.* 1224. 1 *Term Rep.* 161.

In what caſes acceptance of rent, after the expiration of notice to quit, is a waiver of ſuch notice, and in what not, ſee poſt, p. 61.

CHAP. VIII.

OF RENTS.

RENT is defined to be a certain profit iſſuing yearly out of lands or tenements corporeal, and is in the nature of a return or compenſation for the uſe and occupation of them. There are at common law various ſpecies of rent; as rent-ſervice, rent-charge, rent-ſeck, &c.; but that which is uſually reſerved from a tenant to his landlord, as a retribution for the profits of land demiſed, is the only one which belongs to our preſent ſubject: and the law relating to this ſpecies of rent, compoſes ſo conſiderable a part of the information neceſſary for every landlord and tenant, that we ſhall ſpare no pains to be as minute and explicit as the importance of the ſubject requires: with this view we will conſider,

Rent defined.

Obſervation.

1. *How and to whom rent ought to be reſerved.*
2. *To whom it is payable on the death of the leſſor, and other particular caſes.*
3. *Of the demand of rent.*
4. *Of the tender and refuſal of rent.*
5. *Of the acceptance of rent.*
6. *Of the mode of recovering rent in arrear.*

1. *Concerning the Reſervation of Rent.*

Rent being, as we before obſerved, a profit iſſuing out of lands or tenements, by way of return or recompence for the uſe and occupation of them; it follows, that it muſt be reſerved and made payable *out of* the lands or tenements demiſed, and *to* the perſon demiſing them. *Perk.* § 626.—It muſt not be a part of the thing itſelf; nor iſſuing out of ſomething elſe; nor payable to a ſtranger. *Co. Lit.* 47. 142.

How rent is to be reſerved.

In purſuance of theſe rules it has been held, that if a leſſee ſimply covenant to pay ſuch a ſum yearly, without mentioning it as in conſideration for the demiſe of the premiſes, it is not a *rent*, but a ſum in *groſs*. 2 *Bulſ.* 281.

And ſo if a leaſe for years be made, rendering rent to the

heirs of the leſſor, the reſervation is bad, becauſe not to the *leſſor* firſt; but it was ſaid by my Lord *Coke*, that the cleareſt and ſafeſt way is to reſerve the rent generally during the term, without ſaying to *whom*, and leave it to be diſtributed by the law—ſee 8 *Co.* 70,

Alſo, if the reſervation be of graſs, herbage, or other veſture of the land, it is bad, becauſe theſe are part of the thing demiſed. *Co. Lit.* 47.

Rent muſt be reſerved *yearly*; becauſe, in contemplation of law, it is to proceed from the *annual* produce; but it needs not be reſerved *every ſucceſſive* year; for if it be every *other* year, or every *third* year, &c. it is equally good, *Ibid.*

And it ſhould ſeem that the reſervation muſt be founded on a conſideration, that is itſelf not unlawful—for in an action of *aſſumpſit*, for uſe and occupation for a room let to a woman of eaſy virtue, and ſo known to be by the plaintiff, it was ruled by *Kenyon*, Ch. Juſ. that the contract was *contra bonos mores*, (that is, averſive from morality) and therefore not maintainable. 1 *Eſp. Ca.* 13.

Rent need not be reſerved in *money*, for *corn* or other things may be rendered by way of rent; or it may conſiſt in *ſervice*, as to plough ſo much land for the leſſor, &c. 2 *Black. Com.* 41.

And in the caſe of reſervation of corn, the quantity reſerved will be intended to be the legal meaſure of 8 gallons to the buſhel. 6 *Term Rep.* 338.

It muſt be a *certain* profit, or what may at leaſt be reduced to a certainty by either party; for if it were an *uncertain* demand, it would be impoſſible to award adequate damages in caſe of failure. *Co. Lit.* 96.

And if a man demiſe an eſtate at will, rendering rent after the rate of 18l. per annum, as long as the demiſe continues, it will be void, for uncertainty; as it does not appear what rent he ſhall pay in *certain*, or at what time. 4 *Mod.* 79. 1 *Sal.* 262.

A rent cannot, at law, iſſue out of a term of years, but muſt come out of the reverſion; therefore, if a leſſee aſſign his term, he cannot diſtrain for the rent, without expreſsly reſerving a power for that purpoſe. 2 *Wilſ.* 375.

2. *To whom Rent is payable on the Death of the Leſſor, and in certain other Caſes.*

As to freehold and leaſehold premiſes.

It has been ſaid, that rent is reſerved, payable to the leſſor and his *heirs*; but this is to be underſtood only where the leſſor has the inheritance, for in caſe of the death of the leſſor, a diſtinction is to be taken where the lands demiſed are freehold, and where leaſehold, if he had the fee-ſimple of the premiſes demiſed, all rent becoming due ſubſequent to his death, will be payable, (as incident to the reverſion), to his heirs at law; but, if he had a term of years only in the premiſes, the rent will be payable to his executors or adminiſtrators, as part of his perſonal eſtate. *Went.* 53. 2 *Show.* 134.

And in the caſe of leaſehold intereſts, the rent reſerved ſo certainly and indiſputably belongs to the *executors or adminiſtrators*, and not to the heir; that though in the leaſe it be expreſsly reſerved to the *heirs* of the leſſor, yet ſhall the executors or adminiſtrators have it. *Co. Lit.* 57.

Arrearages.

But though rent of lands held in fee-ſimple, will, as incident to the reverſion, go to the heir, yet the arrearages which became due in the leſſor's *life time* will belong to the *executors* or adminiſtrators, for by 32 *Hen.* 8. *c.* 37. "The *executors* or *adminiſtrators* of tenant in fee-ſimple, fee-tail, or for term of life, unto whom any rent ſhall be due, and not paid at the time of their death, ſhall have action of debt for ſuch arrearages againſt the tenants, who ought to have paid in the lifetime of the teſtator, or againſt the executors or adminiſtrators of the ſaid tenants." And as to the under-tenants of tenant for life, ſee 11 *Geo.* 2. *c.* 19. *poſt.* p. 62.

And if rent be payable on the four uſual feaſt-days for payment of rent, or *within twenty days* thereafter, and the leſſor die *after* the *feaſt-day*, but before the expiration of the *twenty days*, the rent is payable to the *heir*, and not to the *executors* of the leſſor; becauſe the *legal and compulſory* time of payment is not till the end of the 20 days. *Cro. Jac.* 227.

And ſo if he die between *ſun-ſet* and *midnight*, on the day upon which the rent is reſerved, the rent will belong to the executors or adminiſtrators of the leſſor; but if *before ſun-ſet*, then it will belong to his heirs; for it is pay-

able at any time before ſun-ſet, though not ſtrictly due till midnight. *Co. Lit.* 302. *Vid.* 1 *P. Wil.* 178.

Tenant in common.

If a tenant holding under two tenants in common, pay the whole rent to one of them, after notice from the other not to pay it, the other tenant in common may diſtrain for his ſhare. 5 *Term Rep.* 246.

3. *Of the Demand of Rent.*

Demand of rent.

In ſome caſes an expreſs demand of rent in arrear muſt be made before it can be recovered, and in others no demand is neceſſary. How far this diſtinction extends it is very material to enquire.

Where neceſſary.

The general rule is this, where the remedy given by the leaſe for non-payment of rent, is by way of *re-entry*, a demand muſt be made before the landlord can enter, otherwiſe his entry will be wrongful; the reaſon of which is, that the law will not ſuffer the tenant to be diveſted of his eſtate without a wilful default in him, which cannot appear till demand and refuſal. *Co. Lit.* 153. 201.

On a like principle a demand is neceſſary, where a *nomine pœnæ* or penalty, is reſerved in caſe of non-payment. *Hob.* 207, 331.

Where not.

If however a demand is diſpenſed with by the expreſs terms of the leaſe, it is not neceſſary to make one previous to the entry, for in this caſe the leſſee has undertaken to pay the rent, whether demanded or not, and muſt abide by his own agreement. *Dyer*, 68. 5 *Co.* 40 b.

But where the remedy is by *diſtreſs* (which is the legal and proper remedy of a landlord for recovery of rent in arrear, when no other is reſerved in the leaſe), no previous demand is neceſſary in order to diſtrain, not even though the leaſe expreſſes that the leſſee may diſtrain for rent behind, *being lawfully demanded*; becauſe, in fact, the diſtreſs itſelf is a demand; and the tenant is not diveſted of his eſtate by a diſtreſs, as he is by re-entry; for on tender of the rent, the diſtreſs muſt be immediately withdrawn. *Moor.* 883.

Exceptions.

There are however ſome exceptions to the above rule, which are principally theſe: when the rent is not payable on the land (which it is if no other place be mentioned), but at ſome other place appointed in the leaſe; and the tenor of the leaſe is, that the landlord ſhall diſtrain for rent behind, being firſt lawfully demanded *at the place mentioned in the leaſe*; though the remedy be by diſtreſs,

yet he cannot diſtrain till demand, becauſe, when the demand is otherwiſe than as the law requires, it muſt be ſtrictly complied with. *Hob.* 208.

And where the leſſor omits to come and receive the rent on the day appointed in the leaſe for payment, and the tenant was on the land ready to pay it, and made a tender of it in the preſence of witneſſes: in this caſe the landlord cannot afterwards diſtrain, till he has firſt demanded it. *Ibid.*

Rent may be demanded, and is payable, at any time before ſun-ſet on the day upon which it is made payable, ſo that there be light enough for the leſſor to count it by. *Co. Lit.* 302.

How a demand is to be made.

A demand of rent, previouſly to a *re-entry*, muſt be made on the *moſt notable* place on the land, where the tenant, in contemplation of law, is ſuppoſed to be; therefore, if the premiſes conſiſt of a houſe, &c. it muſt be made at the front door of the houſe; the perſon demanding need not *enter* the houſe, if he demand it *at* the door, it is ſufficient. 1 *And.* 27.

But where a demand is neceſſary in order to *diſtrain*, it need not be made at the *moſt notable* place on the land; for as the demand is merely to entitle the leſſor to what he has in juſtice an undoubted right, a remedy for his rent, the law is not ſo ſtrict, and it is ſufficient if made any where upon the land. *Co. Lit.* 135.

And *note*, in making a demand for rent, whether previouſly to diſtreſs or to a re-entry, care muſt be taken to demand the *preciſe* ſum due, and the time when it became due muſt be mentioned, for if but a penny more or leſs than the ſum due be demanded, or if it be demanded up to a wrong time, the demand will ſtand for nothing. And it muſt be made by a perſon properly authorized, or it will be of no avail, in reſpect to which it has been held, that a demand by the clerk of the leſſor's attorney, coming by his maſter's orders only, is not a ſufficient authority. 1 *Eſp. Ca.* 115.

4. *Of Tender and Refuſal of Rent.*

Tender of rent is the producing and offering to pay it, at the time and place when and where it is payable; and if it be refuſed, the refuſal may be pleaded in bar of any action for non-payment, and ſave the coſts of ſuit.

Where tenders to be made.

If no particular place is mentioned in the leaſe where the rent is to be paid, it muſt be tendered on the land, or in the houſe or room from which it iſſues, (unleſs it be due to the king, when it muſt be paid either into his exchequer, or to his receiver in the country). *Co. Lit.* 201.

A tender of rent at the proper time and place will ſave a diſtreſs, or entry, or other condition in the leaſe, though the landlord refuſe to take it, the tenant having done all that he was bound to do; the landlord, however, may ſtill maintain an action for debt, or of covenant for his rent, but ſhall recover no damages for non-payment. 3 *Salk.* 344. 1 *Vent.* 21. 1 *Show.* 130.

What a good tender.

Where tender is made to prevent a forfeiture, *the whole* rent due muſt be tendered (except land-tax), unleſs deductions are allowed to be made by the leaſe. 30 Geo. 2. *c.* 3. *Co. Lit.* 202.

And tender of the reſidue, after deducting the expence of repairs which the landlord was bound to do, is a ſufficient tender. 2 *Anſtr.* 575.

Tender of rent after diſtreſs is impounded, is inſufficient, for it is then in the cuſtody of the law. 5 *Term Rep.* 432.

If the rent be tendered in a lump, it is a good tender, for it is the receiver's buſineſs to count it out and ſee that it is right. 5 *Term Rep.* 115.

Tender in bank notes is a good tender, unleſs objection is made to them at the time. *Ibid.*

5. *Of Acceptance of Rent.*

Acceptance of rent.

If a landlord accept the laſt quarter's rent when there are arrears on a former quarter, he precludes himſelf from demanding the arrears, and it is ſaid that no proof will be admitted to ſhew that they are unpaid. 3 *Co.* 65. but *quære*, and ſee 2 *Term Rep.* 366. 1 *Eſp. Ca.* 173.

After forfeiture of leaſe.

Acceptance of rent after the leaſe is forfeited, (with notice of the forfeiture) will do away the forfeiture and reeſtabliſh the leaſe, becauſe the leſſor's accepting the rent ſufficiently ſhews his will that the leaſe ſhould continue, he not being entitled to the rent but by the leaſe. *Coup.* 803; 483. 2 *Term Rep.* 425; but otherwiſe, if there was no notice. 1 *Show.* 341. — *note (c)*, and ſee *Salk.* 259. 3 *Co.* 64. a.

And for the ſame reaſon, bringing an action for the rent, is held to be equally a waiver of the forfeiture,

for it is an acknowledgment that the covenants of the leaſe are ſubſiſting. *Eſp. Ni. Pri.* 463.

We have ſeen that if an infant under the age of 21 years make a leaſe, he may avoid it when he attains that age, but if at his full age he accept of rent, (unleſs due before) he confirms the leaſe, and cannot afterwards avoid it. *Plow.* 418.

If a leſſor accept of rent from his leſſee's aſſignee, knowing of the aſſignment, he cannot afterwards diſtrain or have an action of debt againſt the leſſee for rent, for the privity of contract is deſtroyed; but he may bring an action on the leſſee's covenant, for no implication of law can do away an expreſs and unconditional covenant. 3 *Co.* 24.

If leſſee accept *ſingle* rent after *double* rent is incurred under 4 Geo. 2. *c.* 28. he waives the double rent. *Cowp.* 247. becauſe the double rent is a penalty, and by accepting the rent, the party waives the penalty, per *Aſton. Juſ. Ib. (ſee Notice to Quit).* After notice to quit.

Acceptance of rent for the occupation of the land *ſubſequent* to the time when notice to quit had been given and expired, is not of *itſelf* a waiver of the notice, but it will be left to the jury to conſider, under all the circumſtances, whether the notice was intended to be waived or not. *Cowp.* 243, 483, 803.

Acceptance of rent after the expiration of an eſtate for life, and of a notice given to the tenant to quit on a certain day, was held not to be a waiver of the notice, but only evidence of the tenant's holding from year to year. 1 *Term Rep.* 161.

6. *How Rent in Arrear may be recovered.*

Having enquired pretty fully concerning the reſervation, demand, tender, and acceptance of rent, we ſhall now proceed to conſider how rent in arrear may be recovered where no tender has been made, and demand has been ineffectual. Recovery of rent.

Rent in arrear may be recovered, 1. By action at law, 2. By diſtreſs on the premiſes, 3. By ejectment.

1. *By action or ſuit at law*; which may be either on the leſſee's covenant for payment, or in an action of debt: and theſe may be either at the common law or by ſtatute—at the common law the diſtinction is that *covenant* will lie in all caſes where there remains a privity of eſtate be- By action.

tween the tenant and the leſſor, and *debt*, where the privity of eſtate is gone, and privity of *contract* only remains; but this is, in certain caſes, altered by *ſtatute*, and *ſeems* not to have been always very *accurately* obſerved by the courts.

On ſtatute 32 H. 8.

By ſtat. 32 Hen. 8. *c.* 37. "*Executors or adminiſtrators* of tenants in fee-ſimple, fee-tail, or for life, ſhall have action of *debt* for arrears of rent due in the life-time of their teſtators or inteſtates."

8 Anne, c. 14.

Formerly no action of debt could be maintained againſt a tenant for life, for rent reſerved, becauſe both the land itſelf, and the chattels thereon, were pledges for the payment of it; but now by ſtat. 8 Anne, *c.* 14. "Any perſon having rent in arrear upon any leaſe for *life* or lives, may bring action of debt for ſuch rent, as if the ſame were due on a leaſe for years."

4 Geo. 2.

By 4 Geo. 2. *c.* 28. "*Tenants holding* lands or tenements after the expiration of their leaſes, or terms, and notice given them to quit, ſhall pay double rent for the ſame, to be recovered by action of debt."

11 Ibid.

By 11 Geo. 2. *c.* 19. "Where any tenant for life ſhall die before or on the day on which any rent was reſerved, upon any demiſe which determined on the death of ſuch tenant for life, the executors or adminiſtrators of ſuch tenant for life may, in an action on the caſe, recover of the under-tenants, if ſuch tenant for life die *on* the day on which the ſame was made payable, the *whole*; or if *before* ſuch day, then a *proportionate part* of ſuch rent: before which ſtatute if tenant for life died before the day whereon the rent became due, ſuch rent was not recoverable.

And by the ſame ſtat. "Where the demiſe is not by deed, the landlord ſhall recover reaſonable ſatisfaction in an action on the caſe for uſe and occupation; and if on ſuch trial any rent ſhall appear to have been agreed upon, it ſhall be evidence of the quantum of damages."

Action by the common law.

An action of debt will lie at the common law alſo for arrears of rent due on leaſes for years or at will. *Co. Lit.* 47.

But it has been doubted, whether debt will lie for rent againſt a copyholder, particularly unleſs the lord, by conveying away the manor, has loſt his remedy by diſtreſs. Vide 1 *Roll. Abr.* 374. *Gilb. Ten.* 308.

And if a penalty be given by the leaſe, in caſe of non-payment of rent, an action of debt will lie to recover it. *Ibid.* 162.

Action of debt will lie againſt a leſſee for rent due after aſſignment of his term; for though the privity of eſtate is gone, privity of contract remains. 3 *Co.* 22. *ſed vid. Ibid.* 24.

Debt will lie *after* the expiration of the leaſe, for rent due *before*, the privity of contract ſtill remaining. 2 *Ibid.* 227.

The bankruptcy of a leſſee is no bar to an action of covenant brought againſt him for rent due ſince the bankruptcy. 4 *Term Rep.* 94. Bankruptcy no bar.

Nor is infancy a bar to an action of *aſſumpſit* for rent, ſo that the infant be of age when action brought. 2 *Bulſt.* 69. 3 *Bur.* 1717.

Nor is the ſale of the leaſe under writ of *fieri facias* or *elegit*, or the forfeiture of it by attainder, a bar to ſuch covenant. 4 *Term Rep.* 94—*ſee alſo Tit.* COVENANTS and ASSIGNMENT.

Actions of *covenant* for rents we have ſeen, muſt be brought where the *lands lie*. But in reſpect of actions of *debt*, there are theſe diſtinctions:

If the action be againſt the *original leſſee*, the venue may be laid *either* where the lands lie *or* where the deed was executed, but if it be againſt the aſſignee of an *aſſignee* of the *leſſee*, it muſt be laid where the lands lie, becauſe *he* is chargeable in debt by reaſon of the privity of eſtate only. 2 *Salk.* 651. 2 *Stra.* 776. And for the ſame reaſon, debt againſt the *executor* of the leſſee muſt be brought where the lands lie. 2 *Lev.* 80. And ſo too in debt by the aſſignee of the leſſor againſt the leſſee. 1 *Wilſ.* 165.

An *aſſumpſit* alſo, it has been held, will lie for rent. 1 *Term Rep.* 378. *Eſp. Ni. Pri.* 21.

Of DISTRESS *for Rent in Arrear.*

2. By diſtreſs.

Diſtreſs is the taking of a perſonal chattel out of the poſſeſſion of the wrong doer into the cuſtody of the party injured, to procure a ſatisfaction for the wrong committed.

It is given by various ſtatutes for the recovery of penalties, rates, and other duties, and is at the common law the moſt uſual, and in general, the ſhorteſt and beſt remedy for recovering rent in arrear. In conſidering this ſubject, it will therefore be proper to be pretty minute and explanatory; in order to which we ſhall enquire:

1. Who may make diſtreſs for rent in arrear, and who may not.
2. Of what things diſtreſs may be taken, and of what not.
3. Of the time and manner of making diſtreſs.
4. How a diſtreſs is to be diſpoſed of when taken.
5. How it may be replevied or avoided; and conclude with,
6. Some practical directions in making a diſtreſs.

1. *Who may diſtrain for Rent in Arrear, and who may not.*

Who may diſtrain.

By the common law, and the various ſtatutes made in favour of this ſpecies of remedy for recovery of rent, all perſons having the reverſion or remainder of lands, &c. after the determination of the particular eſtate or exiſting term therein, may of common right diſtrain for rent in arrear without any clauſe of diſtreſs for that purpoſe contained in the leaſe; as if one ſeized in fee make a leaſe thereof, ſaving to himſelf the reverſion, and reſerving rent, or other ſervices, the law gives him a remedy for the ſame by diſtreſs, without any expreſs proviſion for that purpoſe; but if he ſave not to himſelf the reverſion, he cannot diſtrain of common right, but muſt reſerve a power of diſtreſs in the leaſe. *Co. Lit.* 142. *Cro. Eliz.* 636.

Executors and adminiſtrators.

By 32 Hen. 8. *c.* 37. "the executors and adminiſtrators of tenants in fee-ſimple, fee-tail, and for term of life, may diſtrain for rent due in the life-time of their teſtators and inteſtates, ſo long as the premiſes charged therewith continue in the poſſeſſion or ſeizin of the tenant, who ought to have paid ſuch rent, or any other perſon claiming from the ſame tenant by purchaſe, gift, or deſcent, in like manner as their teſtator, or inteſtate might have done."

Huſbands in right of their wives.

And by the ſame ſtat. § 7. a huſband having ſuch lands or tenements, as aforeſaid, in right of his wife, may diſtrain for rent in arrear, after his wife's deceaſe, as if ſhe were living.

On this ſtatute, it has been determined, that it extends to no perſons or eſtates, but thoſe particularly named in it, and not to thoſe ſtanding merely in a ſimilar ſituation. *Bul. Ni. Pri.* 56.

It ſhould not ſeem therefore to extend to the executors of a grantee of a rent charge for *years*, (as eſtates for years are not named in the ſtatute). *Cro. Car.* 471—but where an executor diſtrained on a leaſe for *years*, for rent due to his teſtator, it was held to be good. *Bul. Ni. Pri.* 57.

Nor does it extend to rents reſerved on copyholds, thoſe not being mentioned in the ſtatute. *Yelv.* 135.

And the ſtatute gives no new right to the executor, which the teſtator had not whilſt living, if therefore he had by any means deprived himſelf of the privilege of diſtraining, it will not be revived in the executor. *Co. Lit.* 162. b.

And ſo too, diſtreſs, under the words of the ſtatute, muſt be made whilſt the lands remain in poſſeſſion of the tenant from whom the rent was due, or of thoſe claiming under him, and not afterwards. *Ibid.* and *Cro. Eliz.* 547.

Diſtreſs after expiration of leaſe.

And by ſtat. 8. An. *c.* 14. "Rent in arrear may be diſtrained for, though the leaſe whereon it is reſerved be determined, ſo that the diſtreſs be made within ſix months after ſuch leaſe has expired, and during the continuance of the landlord's title and tenant's poſſeſſion."

Renewal of leaſe.

By 4 Geo. 2. *c.* 28. § 6. "In caſe any leaſe ſhall be ſurrendered in order to be renewed, and a new leaſe executed by the chief lord, the new leaſe ſhall be valid without the ſurrender of the under-leaſes, and the ſame rents and duties, and the like remedies, ſhall be had as if the former leaſe had been continued," before which ſtatute all under-leaſes were vacated by a ſurrender of the original leaſe.

Bodies politic.

And by 4 Geo. 2. *c.* 28. "Bodies politic and corporate ſhall have the like remedy by diſtreſs for rent as other perſons, which they could not in common law."

Mortgagee.

Alſo a mortgagee after having given notice of the mortgage to the tenant in poſſeſſion, under a leaſe granted previous to the mortgage, being entitled to the rent due at and after the time of ſuch notice given, may make diſtreſs for the ſame. *Doug.* 279, 266.

Annuitant.

It was doubted whether an annuitant having a term for years veſted in him, (though with power of diſtreſs) to ſecure the payments of the annuity, could diſtrain for arrears of the annuity, but held that he might, for the grantor of the annuity is, during the term, as it were tenant to the grantee to the amount of the annuity. 2 *Black. Rep.* 1326.

Lord of manor in reſpect of copyholds.

The lord of the manor may diſtrain of common right, for all ſervices ariſing from the tenure, as homage, fealty, rent, ſuit at court, and the like: but this diſtreſs cannot be ſold, but only impounded till ſatisfaction be made, or the right of diſtraining be conteſted by replevin. *Gilb. Diſt.* 2. 3 *Black. Com.* 13.

He cannot, however, diſtrain for *fines*, unleſs authorized by ſpecial preſcription. 11 *Co.* 45. a.

And the ſervices or rent for which the lord may diſtrain, muſt be *certain*, or ſuch as may be reduced to a certainty, otherwiſe the lord cannot on avowry recover damages for non-payment, or non-performance, for a jury cannot determine the damage he has ſuſtained. *Co. Lit.* 96.

As to heriots.

As to heriots, which are of two ſorts, *heriot-ſervice*, and *heriot-cuſtom*, there is this diſtinction; a *heriot-ſervice* being due on a ſpecial reſervation, and therefore little different from a mere *rent*, may be either ſeized or diſtrained, but a *heriot-cuſtom* being no reſervation, but depending intirely upon uſage and cuſtom, cannot be diſtrained. *Co. Cop.* 24.

And in the caſe of heriot-*ſervice*, the lord may diſtrain *generally*, and take *any* beaſt of the tenant; but for heriot-*cuſtom*, he muſt take the very beaſt itſelf, and not *another* as a diſtreſs for it. *Cro. Eliz.* 589. *Cro. Car.* 269.

The tenant muſt be *owner* of the heriot, or it cannot be due, therefore no heriot can be taken on the death of a feme covert, for ſhe cannot be owner of any perſonality, which a heriot is. 4 *Leo.* 239.

Who cannot diſtrain.

A leſſee who has aſſigned his term cannot diſtrain for rent, becauſe the reverſion is not in him, but if by granting an *under-leaſe* only, he reſerve the reverſion, he may diſtrain. 2 *Wilſ.* 375.

Nor can a perſon having a fee farm rent, diſtrain for it, unleſs the caſe be within the ſtat. 4 Geo. 2. c. 28. § 5. See *Doug.* 624.

2. *Of what things Diſtreſs may be taken, and of what not.*

Of what diſtreſs may be taken.

It may be ſaid, in general, that diſtreſs may be taken of all goods and chattels perſonal, found on the premiſes demiſed; and that, whether they be the property of the tenant or of a ſtranger; for great delay and fraud might be

ſuffered by the landlord, if he were obliged firſt to prove that the goods actually belonged to his tenant, or to refute every claim made upon them by others, before he could take them in diſtreſs. And if the goods be the property of a ſtranger, he has his remedy over by action againſt the tenant. Our ſhorter way therefore will be to enquire, what things, by the policy of the law, are excepted from this rule, and therefore *not* diſtrainable, than to enumerate all the individual things which *are*: it may be proper, however, juſt to notice ſome things, that though diſtrainable now, were not ſo at the common law.

Things not diſtrainable at common law, but made ſo by particular ſtatutes.

And firſt, corn in ſheaves, or hay in cocks, or in a barn, could not at common law be taken in diſtreſs for rent; becauſe a diſtreſs being formerly conſidered merely as a *pledge*, to be detained till ſatisfaction made, nothing could be diſtrained, which from its nature could not be returned again to the owner in the ſame ſtate as when it was taken; and corn in ſheaves, or hay in the cock, cannot be removed without ſome loſs or damage.

Corn, &c. in ſheaves.

But this exemption having been found to encourage tenants to withhold their rent, it was provided by ſtat. 2 Will. 3. c. 5. "That it ſhall be lawful for any perſon having rent in arrear on any demiſe, leaſe, or contract, to ſeize any ſheaves or cocks of corn, or corn in the ſtraw, or hay lying upon any part of the land charged with ſuch rent, and to detain the ſame in the place where it ſhall be found, in the nature of a diſtreſs, until the ſame ſhall be replevied or ſold."

Corn growing.

Neither could corn, &c. *growing*, be diſtrained till lately, becauſe of the rule of law, that nothing can be taken in diſtreſs, which is ſo fixed to the freehold, as to become as it were a part of it: but by ſtat. 11 Geo. 2. c. 19. it is enacted, "That every landlord may take as a diſtreſs for arrears of rent, all ſorts of corn, or other products whatſoever, which ſhall be growing on any part of the demiſed premiſes, and the ſame may lay up, when ripe, in the barn or other proper place on the premiſes ſo demiſed or holden."

Cattle on common.

And by the ſame ſtatute it is provided, that a landlord may diſtrain for arrears of rent any cattle or ſtock of his tenant, depaſturing upon any common appendant or appurtenant to the premiſes demiſed.

Things ſtill exempted from diſtreſs for rent.

We now proceed to enumerate ſuch things as are exceptions from the general rule we have before laid down, and therefore *not* diſtrainable for rent arrear. And as

every thing which is diſtrained is preſumed to be the property of the tenant, it follows that ſuch things wherein no man can have an abſolute or valuable property, are not diſtrainable.

Animals of a wild nature.

Therefore dogs, cats, hares, rabbits, poultry, fiſh, or other things *feræ naturæ*, or of a wild nature, are exempt from diſtreſs. *Co. Lit.* 47. 2 *Inſt.* 133.

But deer kept in a private incloſure are held to be diſtrainable, as being reduced to a kind of valuable ſtock. 3 *Black. Com.* 7.

Things in the way of trade.

Such things as are on the premiſes in the way of the tenant's trade, as horſes in a ſmith's ſhop, or in a common inn; corn at a mill to be ground; materials in a weaver's, or cloth and garments in a taylor's ſhop, are alſo exempted; theſe things being protected for the general benefit of trade. *Co. Lit.* 47. *Dy.* 312. 4 *Term Rep.* 569. On this latter principle it is ſaid, that *ſheep* cannot be diſtrained whilſt any other diſtreſs is to be had. 2 *Inſt.* 133.

Things at an inn.

Alſo the cattle and goods of a gueſt or traveller at an inn are free from diſtreſs. 3. *Bur.* 1497.

Implements of a man's trade.

So the tools and implements of a man's trade, as the books of a ſcholar, the axe of a carpenter, the loom of a weaver, and the like, are generally held to be privileged from diſtreſs for rent, as taking theſe would not only prevent him from ſerving the public in his ſtation, but deprive him of the means by which alone he might be enabled to diſcharge the ſum for which the diſtreſs was made. *Noy Max.* 66. 2 *Show.* 127.

But ſince the nature of a diſtreſs has been altered by the various ſtatutes empowering a ſale of the things diſtrained, this rule is in ſome degree relaxed; and it has been held by a very late and reſpectable deciſion, that the implements of a man's trade are no longer privileged than while he is actually uſing them; and ſo long as there is other ſufficient diſtreſs on the premiſes: and it was at the ſame time held, that beaſts of the plough are protected only under the ſame circumſtances. 4 *Term Rep.* 565.

And agreeably to this deciſion, it has been held, contrary to the ancient law, that wearing apparel, when not actually upon the back, is diſtrainable. 1 *Eſp. Ca.* 206. *Peake's Ca.* 36.

And though things which could not, at the common law, be reſtored again in the ſame plight in which they were taken, as milk, fruit, and the like, are generally held to be free from diſtreſs, 3 *Black. Com.* 10, and there

is not that I know of, any expreſs deciſion againſt this rule, I ſhould doubt whether it would be now regarded; for ſince diſtreſs is authorized to be ſold, the former reaſon no longer applies—and ſee *Biſſet*, v. *Caldwell*, *Peake's Ca.* 36.

Things fixed to the freehold cannot be diſtrained, as chimney-pieces, anvils, mill-ſtones, &c. becauſe they are part of the inheritance: nor a mill-ſtone, even though removed from the mill, if it be removed for ſome *neceſſary* purpoſe, as to be picked, &c. for it ſtill continues part of the mill; and ſo it is of a ſmith's anvil on which he works, for it is accounted part of his forge, though it be not actually fixed to the ſhop. *Co. Lit.* 47. 4 *Term Rep.* 565. Things fixed to the freehold.

What is in the actual uſe of another cannot be diſtrained; for a diſtreſs, which is in the nature of a pledge, cannot be made of thoſe things which cannot be reduced into the poſſeſſion of the perſon diſtraining; therefore, the horſe a man is riding, the tool a man is working with, and the like, are for the time privileged by law. *Co. Lit.* 47. 1 *Vent.* 36. 4 *Term Rep.* 569. Things in uſe.

Nor can *money*, unleſs it be in a bag, ſo that the ſame individual pieces may be reſtored on the redemption of the pledge diſtrained. 2 *Bac. Ab.* 109. Money looſe.

Goods in execution, cattle impounded for damage feaſant, &c. cannot be taken in diſtreſs, becauſe they are already in the cuſtody of the law. *Gilb.* 38. Things in the cuſtody of the law.

We have ſaid that all *goods* found upon the premiſes may be taken in diſtreſs to whomever they may belong; but the *cattle* of a ſtranger found on the premiſes of a tenant, are diſtrainable or not, according to the following reaſonable diſtinctions: As to the cattle of a ſtranger on tenant's land.

If the cattle break through the fences and commit a treſpaſs by coming upon the land, and this *by default of the owner*, they are diſtrainable *immediately* for the tenant's rent, as a puniſhment to the owner for the wrong committed through his negligence. 1 *Raym.* 168. And ſo if they be turned in with the conſent of the owner. *Cro. Eliz.* 549. 2 *Vent.* 50.

But if it happened from the *tenant's fault* in not repairing hedges which it was his buſineſs to repair, the landlord cannot diſtrain them *until they have been levant and couchant*, i. e. *one night at leaſt upon the land*, (unleſs he has given notice to the owner, and he ſuffers them to remain there) for if the landlord had had the lands in his own hands, he muſt have repaired the fences; and when he puts in a

leſſee, he ought, by covenant, to oblige him to repair, and therefore to allow the landlord to diſtrain them would in effect be permitting him to take advantage of his own negligence. 2 *Lutw.* 1573.

And by *Treby*, C. J. *Raymond* 168. where cattle eſcape *accidentally*, there they are not diſtrainable till they have been *levant and couchant*; but if they eſcape *by default of their owner*, they are diſtrainable the *firſt minute*.

3. *Of the Time and Manner of taking Diſtreſs.*

When diſtreſs to be taken;

Diſtreſs for rent muſt be in the day-time, for if made at night it will be bad. *Co. Lit.* 142.

not till the day after the rent reſerved;

It cannot be made, therefore, till the day after that on which the rent is reſerved in the leaſe; for we have before ſeen, that though payable, it is not ſtrictly due till midnight of the day upon which it is reſerved.

nor after tender.

Diſtreſs cannot be made after the rent has been tendered: if therefore, the landlord come to diſtrain, the tenant may, before the diſtreſs made, tender the arrears, and if the diſtreſs be afterwards taken, it is illegal; and though it be after the diſtreſs, if *before* it is impounded, the landlord muſt deliver up the diſtreſs on tender of the rent; and, if he do not, the detainer is unlawful. 2 *Inſt.* 107.

May be made within ſix months after expiration of leaſe.

By ſtat. 8 An. *c.* 14. diſtreſs is not confined to the duration of the tenant's leaſe, but may be made at any time within ſix months after it expires, ſo that the tenant be in poſſeſſion of the premiſes demiſed, and the landlord's title to them continues.

And where there is a cuſtom (as in ſome places it is) for the tenant to leave on the premiſes his way-going crop till a certain period after the expiration of his term, it has been held, that ſuch crop may be diſtrained, though the ſix months have expired. 1 *Hen. Black. Rep.* 5.

Landlord ought to diſtrain for the whole at once.

The landlord ought to diſtrain for the whole rent at one time, and not part at one time, and part at another, if there be ſufficient at firſt; and formerly, if he took too little the firſt time, he could not diſtrain again, becauſe it was his folly not to diſtrain ſufficient in the firſt inſtance. 2 *Lutw.* 1532. But by 17 Car. 2. *c.* 7. if there is not ſufficient diſtreſs on the premiſes, or the landlord miſtake in the value of the thing diſtrained, and take too little, he, his executors, or adminiſtrators, may take a ſecond diſtreſs to complete his remedy.

But may diſtrain again.

In affirmance of the ancient common law, it is enacted by ſtat. 52 Hen. 3. *c.* 15. that it ſhall not be lawful for any manner of cauſe, to take diſtreſs *out of the fee*, in the king's highway, or in the common ſtreet, except the king and his officers, having *ſpecial* authority ſo to do. Where diſtreſs to be made.

But by ſtat. 11 Geo. 2. *c.* 19. landlords may ſeize as a diſtreſs for rent, any cattle or ſtock belonging to their tenants feeding upon any common appendant or appurtenant to any part of the premiſes demiſed.

And though ſuch goods and chattels only as are found upon the land when the diſtreſs is made are properly liable for the rent, yet, if the tenant, ſeeing his lord coming to diſtrain, drives his cattle off the land, the landlord may follow and diſtrain them out of the fee, ſo that he had once a view of them upon the land; for the tenant cannot by his own wrong prevent the landlord of his right. 2 *Inſt.* 132.

And now by 11 Geo. 2. *c.* 19. "If any tenant for life, or otherwiſe, of any meſſuages or other hereditaments, upon the demiſe whereof any rent is reſerved, ſhall fraudulently convey away from ſuch premiſes his goods or chattels, to prevent the landlord from diſtraining, it ſhall be lawful for every landlord or leſſor, (in England) or any perſon by him lawfully authorized, within the ſpace of 30 days next after ſuch goods ſhall be ſo conveyed away, to diſpoſe of the ſame, as if they had been diſtrained upon the premiſes; unleſs ſuch goods be *bona fide* ſold before ſuch ſeizure. As to concealing goods, &c.

"And if any tenant or leſſee ſhall fraudulently remove or conceal his goods as aforeſaid, every perſon ſo offending or aſſiſting in ſo doing, ſhall forfeit to the landlord double the value of the goods. or removing them.

"And when the goods or chattels ſo carried off or concealed ſhall not exceed the value of 50l. the landlord, &c. may make complaint againſt ſuch offender, before two juſtices of the peace of the county, who ſhall adjudge the aforeſaid penalty; and in caſe the offender ſhall neglect to pay it, the ſame may be levied by diſtreſs and ſale of the goods and chattels of the offender."

By the common law, no perſon was allowed to break open or throw down any gates or incloſures to make a diſtreſs; and the leſſor could not, in any caſe, have entered into the houſe, or even barn of his tenant, for the purpoſe of making a diſtreſs, unleſs the outer door had been open. Landlord may break open doors.

But now, by ſtat. 11 Geo. 2. *c.* 19. on oath made before a juſtice of the peace, of a reaſonable ſuſpicion, that goods are concealed in any houſe, or place, faſtened to prevent their being taken in diſtreſs, it ſhall be lawful for the landlord, or other perſon authorized to take a diſtreſs for rent, (calling to his aſſiſtance the conſtable or other peace officer of the pariſh or place where the ſame are ſuſpected to be concealed), to break open in the day-time, and enter into any ſuch houſe, &c. and ſeize ſuch goods, &c. for rent in arrear, in like manner as if they had been in any open field or place.

May ſeize part in the name of the whole.

If a landlord ſeize only a part of the goods, &c. of his tenant for rent, in the name of them all, it will be a good ſeizure of the whole. 6 *Mod.* 215.

Diſtreſs muſt not be exceſſive.

Diſtreſſes ought not to be exceſſive, but in proportion to the duty diſtrained for. 2 *Inſt.* 106.

Unlawful diſtreſs.

If a diſtreſs and ſale be made as for rent in arrear, and it turn out that none was due, the owner may, by 2 Will. & Mary, *c.* 5. recover double the value of the goods diſtrained, with full coſts.

And if a diſtreſs be made without cauſe, or contrary to law, as if it be taken on the highway &c. the owner may at any time before it is impounded, reſcue it, but if it be once impounded he cannot take it, becauſe it is then in the cuſtody of the law. *Co. Lit.* 47. 1 *Raym.* 105.

One diſtreſs cannot be taken for ſeveral rents.

One diſtreſs cannot be taken for rent due on *ſeveral demiſes*, but a ſeparate diſtreſs on the premiſes ſubject to the rent, muſt be made for the particular rent due on each. 2 *Stra.* 1040.

The many particulars which attend the taking of a diſtreſs, formerly rendered it a hazardous proceeding, for if any one irregularity was committed, the whole proceſs was void, and the parties treſpaſſers from the beginning: to remedy which, it was provided by ſtat. 11 Geo. 2. *c.* 19. that "Where any diſtreſs ſhall be made for rent juſtly due, and any irregularity or unlawful act ſhall be afterwards committed by the party diſtraining, or his agents, the diſtreſs itſelf ſhall not on that account be deemed unlawful, nor the party a treſpaſſer from the firſt, but the perſon aggrieved ſhall recover full ſatisfaction for the ſpecial damage ſuſtained by ſuch irregularity, and no more, with full coſts of ſuit."

Diſtreſs not unlawful, though irregular.

It has been determined, that no demand of the rent is neceſſary previous to the diſtreſs, even though the words "being lawfully demanded," (which is uſual) are in-

ſerted in the leaſe, for the diſtreſs itſelf is deemed a legal demand. 7 *Co.* 28. b.

But where a penalty is given in caſe of non-payment of rent, and a power of diſtreſs reſerved for ſuch *penalty*, a demand of the rent muſt be made before the penalty can be diſtrained for. *Hob.* 133.

4. *How a Diſtreſs is to be diſpoſed of.*

How diſtreſs to be diſpoſed of.

After the diſtreſs is made, the firſt thing to be done by the diſtrainer is to impound, or ſecure in ſome place of ſafety, the goods, or other things diſtrained.

At common law, the diſtrainer might impound the diſtreſs wherever he choſe, by which means it often happened, that the owner was at a loſs where to find his goods or cattle either to feed or to replevy them; 2 *Inſt.* 106. to remedy which inconvenience, it is enacted,

Diſtreſs cannot be driven out of the county.

By ſtat. 1 & 2 Will. and Mar. that no diſtreſs of cattle ſhall be driven out of the hundred, rape, wapentake, or lathe where the ſame were taken, except to a pound overt within the ſame ſhire, and within three miles of the place where taken, nor ſhall any diſtreſs be impounded in ſeveral different places. But notwithſtanding this ſtatute, it has been held, that where lands lay in two *adjoining* counties, and were under one demiſe at one entire rent, cattle taken in diſtreſs on both lands, might be impounded together in either of the counties. 1 *Raym.* 55; but they muſt be put in the ſame pound. 4 *Mod.* 395.

May be impounded and ſold on the premiſes.

By 11 Geo. 2. *c.* 19. which was made for the benefit and convenience of landlords, it is likewiſe provided, that "it ſhall be lawful for any perſon making diſtreſs for rent, to impound the ſame on ſuch part of the premiſes as ſhall be moſt convenient, and diſpoſe thereof *upon* the ſame, in like manner as he may do *off* the premiſes, by virtue of the ſeveral acts already in force."

Open pound.

If the diſtreſs be of cattle or other living things, and they are impounded in a common open pound, the tenant is bound to know of them at his peril, but if they be impounded in a pound conſtructed for the purpoſe, the diſtrainer muſt give notice to the owner where the diſtreſs is; in either caſe, however, the owner muſt provide them with food: but if they be impounded in a cloſe, or covered pound, as a ſtable, or the like, then muſt the landlord or perſon diſtraining, provide them with neceſſaſaries. *Co. Lit.* 47.

Covered pound.

Houſehold goods, and ſuch other things as would be damaged by the weather, muſt be impounded in an incloſed covered pound, otherwiſe if they be damaged, the diſtrainer will be anſwerable for the loſs. 1 *Inſt.* 47.

Diſtreſs muſt not be uſed.

Cattle or other things muſt not be uſed or worked whilſt in the hands of the diſtrainer, unleſs it be for the benefit of the owner that they ſhould. On this account it has been doubted, whether a diſtrainer might milk a cow, becauſe, though the cow ſhould be milked, yet the owner ought to have come before ſhe had been injured. *Cro. Jac.* 148. 2 *Bac. Ab.* 112.

Diſtreſs loſt.

If the diſtreſs die, or be damaged in the pound, without any default of the diſtrainer, he may make a freſh diſtreſs. 1 *Salk.* 248.

Reſcue of diſtreſs.

By ſtat. 2 Will. & Mar. *c.* 5. if the diſtreſs, after being impounded, be reſcued, any perſon aggrieved thereby, may recover treble damages and coſts againſt the offender, or againſt the owner of the goods if they be afterwards found to come to his uſe or poſſeſſion; and it has been held on this ſtatute, that the coſts ſhall be trebled as well as the damages. 1 *Raym.* 20.

Eſcape.

If after diſtreſs made of cattle, &c. they eſcape from the driver in going to pound, and return to the owner, the owner muſt re-deliver them on demand, or it will be conſtrued to be a reſcue. *Co. Lit.* 161.

Formerly nothing more could be done with things taken in diſtreſs for rent (except in the caſe of the king, and ſome few other inſtances) than detain them in the pound till the rent was paid. But this being frequently found to be of little avail,

Diſtreſs may be ſold if not replevied.

By 2 Will. & Mar. it is provided that where any goods or chattels ſhall be diſtrained for rent due on any demiſe, leaſe, or contract whatſoever, and the owner ſhall not, within five days next after ſuch diſtreſs taken, and notice thereof, and of the cauſe of the taking, left at the dwelling houſe, or other moſt notorious place on the premiſes charged with the rent, *replevy* the ſame, that then, at the expiration of the ſaid five days, the diſtrainer may (with the aſſiſtance of the ſheriff, under-ſheriff or conſtable), cauſe the goods and chattels ſo diſtrained to be *appraiſed* by two ſworn appraiſers, and *ſold* for the beſt price that can be got for the ſame, towards ſatisfaction of the rent for which the ſaid goods and chattels ſhall have been diſtrained, and coſts and charges of ſuch diſtreſs, appraiſe-

ment, and ſale, leaving the overplus, if any, in the hands of the ſaid ſheriff, or conſtable, for the uſe of the owner, on which ſtatute it has been held, that a perſonal or *verbal* notice is ſufficient. 12 *Mod.* 76.

5. *How a Diſtreſs may be replevied or avoided.*

Replevying a diſtreſs.

If a diſtreſs be taken wrongfully, or without ſufficient cauſe, the tenant, or owner, may by virtue of ſtat. 52 Hen. 3. *c.* 21. (commonly called the ſtatute of Marlbridge) apply to the ſheriff, or his deputy, who ſhall grant him a replevin, or reſtitution of the goods diſtrained, upon his giving bond with two ſureties in double the value of the goods, to try without delay the right of diſtraining, and to return the diſtreſs in caſe the right ſhould be determined againſt him: when therefore the ſheriff, or his deputy, have received ſuch ſureties, they are bound to cauſe the things diſtrained to be immediately reſtored to the poſſeſſion of the owner.

If therefore the tenant mean to replevy the goods diſtrained, he muſt, within five days after notice given him of the diſtreſs, go with two houſekeepers to the ſheriff's office, or if in the country, to a perſon whom the ſheriff has authorized to grant replevies, and enter into ſuch bond, upon which the ſheriff will direct a precept to one of his bailiffs, that the goods may be reſtored to the tenant, to wait the event of the ſuit in replevin.

It has been held, however, that goods which have been taken *abroad* are not repleviable, though they may have been afterwards brought into England by the party. 1 *Show.* 91.

6. *Practical Directions in making a Diſtreſs.*

Directions in making a diſtreſs.

The proper and regular way of making a diſtreſs for rent in arrear is, to go upon the premiſes for which the rent is due, and take hold of ſome piece of furniture, or other article there, and ſay, *(if the diſtreſs be made by the landlord himſelf)*, "I ſeize this chair *(or other thing, as the caſe may be)*, in the name of all the goods and effects on theſe premiſes, for the ſum of £. 20, being *half a year's* rent due to me at *Lady-day laſt.*" *(Or if the diſtreſs be made by ſome perſon empowered by the landlord)*, ſay, "for the

ſum of £. 20 due to *James Frazer*, eſq. the landlord of theſe premiſes, at Lady-day laſt, by virtue of an authority from him the ſaid James Frazer, to me given for that purpoſe. See *Appendix*. No. VII.

An inventory is then to be made of ſo many of the goods, &c. as it is ſuppoſed will be ſufficient to cover the rent, and expences of the diſtreſs, appraiſement and ſale, and this inventory, muſt be ſerved on the tenant, by giving it to him perſonally, or leaving it upon the premiſes, with a notice thereto annexed. *Appendix*, Ibid.

The goods may then be immediately removed, which is the ſafeſt way, unleſs the tenant conſents to let a man remain in poſſeſſion of them upon the premiſes, and then they may remain till the ſeventh day after the diſtreſs made, when they *muſt* be removed, appraiſed, and ſold, or the diſtrainer will be a treſpaſſer, unleſs indeed the tenant expreſsly requeſts, and the landlord agree, that ſtill further time be given for payment, in which caſe the tenant ſhould ſign a memorandum, conſenting to the landlord's continuing ſuch poſſeſſion. *Appendix*, Ibid.

If the goods are not replevied, nor the rent paid at the end of the ſeventh day, or other time allowed, the landlord is to go to the place where the goods are impounded, with the ſheriff, or conſtable, and two ſworn brokers, when the ſheriff or conſtable will adminiſter an oath to the appraiſers to the following effect, "You, and each of "you, ſhall well and truly appraiſe the goods and chat-"tels mentioned in this inventory, *(holding the ſame in "his hand)* according to the beſt of your judgment."

Then a memorandum thereof is to be written on the back of the inventory, as in *Appendix*, No. VII.

When the appraiſers have valued the goods, and an indorſement of their valuation is written upon the back of the inventory, as in *Appendix*, No. VII. the goods are to be ſold, and the ſurplus of the money ariſing from the ſale, after deducting the arrears of rent, and all reaſonable charges and expences attending the diſtreſs, is to be paid to the tenant.

Of Ejectment for Recovery of Rent Arrear.

3. By ejectment.

Ejectment is properly an action by which lands or tenements may be recovered againſt him who has unlawful poſſeſſion of them; originally it lay only againſt a leſ-

ſor, reverſioner, or ſtranger, who ouſted (i. e. turned out) the tenant from the occupation of land demiſed to him, during the continuance of his term, but now by a ſtring of legal fictions it is applicable to many other purpoſes; and by 4 Geo. 2. *c.* 28. is rendered an eaſy and expeditious remedy to landlords for the recovery of rent in arrear, on the demiſed premiſes in lieu thereof.

By this ſtatute it is enacted, "that in all caſes between landlord and tenant, as often as one half year's rent ſhall be in arrear, and the landlord has *a right by law to re-enter* for non-payment, and *no ſufficient diſtreſs is to be had*; ſuch landlord may, without any formal demand, or re-entry, ſerve a declaration in ejectment for recovery thereof; or in caſe the ſame cannot be legally ſerved, or no tenant be in poſſeſſion, affix the ſame upon the door of any demiſed meſſuage, or upon ſome notorious place of the land, tenements, or hereditaments, mentioned in ſuch declaration, which affixing ſhall be deemed legal ſervice thereof, and ſhall ſtand inſtead of a legal demand and re-entry; and a recovery in ſuch ejectment ſhall be final and concluſive, both at law and in equity, unleſs all arrears of rent with full coſts be paid, or tendered within ſix months thereafter.

"Provided that if the tenant, before the trial in ſuch ejectment, pay or tender to the landlord, or pay into court all rent in arrear and coſts, all further proceedings ſhall be void."

All proceedings under this ſtatute will be ſtayed on tender of the rent and coſts. *Bul. Ni. Pri.* 97. And if there has been a tender before ſervice of the ejectment, no further proceedings can be had: thus where on tender of rent the leſſor refuſed to accept it, "becauſe he had put the buſineſs into the hands of his attorney," and proceeded in the ejectment, it was ſet aſide for irregularity. 2 *Black. Rep.* 746.

And *note*, that a landlord muſt not receive any rent of his tenant after he has brought an ejectment, till the ſame be determined; if he do, it will be a waiver of the action, and he will be nonſuited. 2 *Bur.* 668.

To enlarge any farther upon this ſpecies of action, which conſiſts of many nice and intricate points of practical law, we think uſeleſs and improper. In the preſent treatiſe we profeſs to inſtruct our readers as to thoſe points only, in which, with our aſſiſtance, he may ſafely Obſervation.

act for himſelf; but when we approach to thoſe matters which profeſſional men are alone competent to undertake, to them it is our duty to direct him, as the only guide on which he can with ſafety depend.

CHAP. IX.

Miſcellaneous Obſervations, Cautions, and Directions, relative to the Hiring and Letting of Houſes and Apartments.

THE numerous frauds and deceptions which are daily practiſed by deſigning perſons, in letting houſes or apartments, particularly in the neighbourhood of the metropolis, has induced us to conclude our enquiries with ſome obſervations on that ſubject, in which we ſhall endeavour to call to mind ſuch directions and cautions as appear to us to be moſt generally neceſſary and uſeful.

Cautions in taking houſes, &c.

The firſt thing neceſſary to be done by a perſon, in taking a houſe, after being ſatisfied that the perſon letting it has a good title, is to examine carefully the covenants and claims in the original leaſe, and alſo thoſe in the under leaſe, if any, to ſee that the terms upon which the premiſes have been let, (by which he will in general be bound) are ſuch as he is willing to agree to, or he may poſſibly find, when too late, that he is tied down by ſuch reſtrictions as will render the houſe unfit for his purpoſe, or likely to involve him in unforeſeen difficulties:—he may be reſtrained from making convenient alterations;—be compellable to rebuild in caſe of fire, or other accident;—be liable to forfeit his leaſe, or a penalty, if he attempt to aſſign over his intereſt, &c. &c.

It becomes him in the next place, to ſee that the rent reſerved in the original leaſe, as alſo the ground rent, and all taxes, are paid up to the time he is to commence poſſeſſion; for if they are not, he will be anſwerable for

the arrears, and can recover them only by having recourſe to the laſt tenant, who, perhaps, is not to be found, or may be unable to repay him.

The ſame caution is neceſſary in taking unfurniſhed lodgings, for if the rent of the houſe be in arrear, either then or at any ſubſequent period, the furniture of the lodger will be liable to be taken in diſtreſs; he ſhould therefore in this, as in all other caſes where he holds of a *leſſee*, and not of the *original* leſſor or owner of the premiſes, require receipt to be produced of the rent and taxes being duly paid up by the *leſſee*, before he advance his *own* rent.

Care ſhould alſo be taken (by examining the leaſe and inventory) that fixtures, and other things belonging to the premiſes, are not paid for together with thoſe belonging to the tenant, for it is not unuſual for a landlord to fit up his houſe with all neceſſary fixtures and conveniences, in which caſe they are included in the rent of the houſe, and not to be paid for ſeparately: if, however, the fixtures have been put up by the tenant, he may remove and conſequently ſell them, as we have ſeen, page 22.

Goods and fixtures are generally taken by appraiſement. In this caſe the uſual way is for the ſeller and buyer, each to appoint a ſworn appraiſer; if theſe diſagree, a third is called in by them, whoſe deciſion is final.

It is almoſt needleſs to add, that care ſhould be taken that the leaſe aſſignment, or other conveyance, be properly drawn and executed according to the rules and obſervations laid down in the various parts of the preſent treatiſe, otherwiſe the ſame inconvenences may ariſe, as we have mentioned above, or the tenant may be evicted for want of a title.

Theſe we deem to be the principal cautions requiſite to be obſerved by thoſe who may have occaſion to take an houſe or lodgings: they are every where highly proper, but peculiarly neceſſary in the metropolis, where ſo many needy and artful people are always on the watch to take in the ignorant and unwary.

Concluſive obſervations.

We here finiſh our conſiderations on the laws reſpecting Landlords and Tenants, and we hope they will be

found uſeful. Upon a ſubject that comprizes ſo many heads, on ſome of which diſcordant opinions are met with, it is difficult to be in all reſpects accurate; we truſt however, the attention we have paid to our ſubject has prevented our being otherwiſe in any material inſtance.—The next ſubject of our enquiries will be the laws relating to *Wills* and *Teſtaments*, and the office and duties of *executors* and *adminiſtrators*; which will compoſe the *ſecond* diviſion of our intended work; the *third* will comprize the laws reſpecting *Maſters* and *Servants*, *Apprentices*, and *Journeymen*, and the *fourth* thoſe relating to *Pariſh Affairs*: All theſe will be written upon a plan ſimilar to that of the preſent Treatiſe, and will complete the deſign we had in view of preſenting the Public with ſome of the moſt uſeful and important heads of the law, under the title of LAW SELECTIONS.

N. B. The whole of the above Selections are now completed, and may be had of the Publiſher of the preſent Volume.

APPENDIX
Of PRECEDENTS.

No. I. *AGREEMENTS.*

1. *Memorandum of an Agreement for letting a First and Second Floor, Garret, and Kitchen, unfurnished (a).*

MEMORANDUM, That it is hereby declared and agreed by and between *John Fenton*, of *Devonshire-Street, Queen-Square*, in the county of *Middlesex*, engraver, and *Charles Danvers*, of the *Inner Temple*, gent. in manner following; that is to say, That the said *John Fenton*, hath agreed to let, and hereby doth let, and the said *Charles Danvers* hath agreed to take, and hereby doth take all that the first and second floor, front garret, and front kitchen, with the conveniences and appurtenances thereto belonging, of the house now in the occupation of the said *John Fenton*, situated No. 20, in *Devonshire-Street*, aforesaid, together also with two cellars adjoining to each other under the pavement of the said street, and to the said house belonging, TO HOLD the same with their appurtenances, and the sole and uninterrupted use and occupation thereof unto the said *Charles Danvers*, his executors, administrators and assigns, for the term of twelve calendar months,

(a) This memorandum, not being a *deed*, (as being *signed* only by the parties, and not *sealed*), must be written upon an *Agreement* stamp, amounting to 7s.

N. B. By 23 Geo. 3. *c.* 58. as altered by 35 Geo. 3. *c.* 30. every agreement, whether obligatory on the parties, or only evidence of a contract, shall be impressed with a 7s. stamp *except* agreements for leases at rack rent, under the yearly value of £. 5. agreements for the hire of labourers, &c. for the sale of goods; for matters not exceeding the value of £. 20. and agreements in *Scotland*. It is not necessary that it should be stamped before it be signed by the parties; if it be done within twenty-one days after it will be equally good.

to commence from the twenty-fifth day of March now next enſuing, at the net yearly rent of thirty-ſix pounds for the year, payable quarterly on the twenty-fourth day of June, the twenty-ninth day of September, the twenty-fifth day of December, and the twenty-fifth day of March thence next enſuing; and the ſaid *John Fenton* doth agree to paint the ſecond floor of the ſaid demiſed premiſes, and have the ſame fit for occupation by the ſaid twenty-fifth day of March next, or as ſoon thereafter as may be, and the ſaid *Charles Danvers* doth engage to make punctual payment of the rent hereby reſerved, in the manner aforeſaid, and to quit and leave the ſaid hereby demiſed premiſes at the expiration of the ſaid term of twelve months (notice to quit being given the ſaid *Charles Danvers* at leaſt three calendar months previouſly thereto) in as good ſtate and condition as reaſonable uſe and wear thereof will permit. As witneſs our hands this ſecond day of March, one thouſand ſeven hundred and ninety-ſix.

John Fenton.
C. Danvers.

Witneſs, *(a)*
James Bryant. } Servants to Mr. *Fenton.*
Wm. Day. }

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2. *Memorandum of Agreement for letting a Firſt Floor and Garret, furniſhed, for Half a Year certain, and from Quarter to Qurter, as long as the Parties ſhall agree (b).*

MEMORANDUM made this ſecond day of June, 1796, between *Abraham Potts*, of &c. and *Chriſtopher Doe*, of &c. as follows: the ſaid *Ab. Potts* doth let unto the ſaid *Chriſt. Doe* an entire firſt floor completely furniſhed, as the ſame now is, (which furniture is particularly mentioned in a ſchedule hereunder written,) being part of the houſe which he the ſaid *Ab. Potts*, now lives in, ſituate and being in *King-Street, Bloomſbury*; TO HAVE AND TO HOLD the ſaid premiſes for and during the term of half a year, to commence from Midſummer-day next enſuing, at and after the rent of fifty pounds per annum, of lawful money of Great Britain, payable quarterly, by even and equal portions, the firſt quarterly payment thereof to be made on Michaelmas-day next enſuing the date hereof. AND

(*a*) One witneſs is ſufficient to atteſt the execution of every ſpecies of deeds, though in practice it is uſual to have two.

(*b*) This muſt be written on a 7s. Agreement ſtamp.

IT IS FURTHER AGREED by and between the parties hereto, that the ſaid *Chriſt. Doe*, after the expiration of the ſaid term of half a year, may hold and enjoy the ſaid premiſes hereby let unto him, from quarter to quarter, ſo long as both parties ſhall agree, at the ſame rent as aforeſaid. AND IT IS ALSO FURTHER AGREED between the parties, that when the ſaid *Chriſt. Doe* ſhall quit the ſaid premiſes hereby demiſed to him, he ſhall and will leave the furniture and other things mentioned and ſet forth in a ſchedule, or inventory thereof hereunder written, in as good ſtate and condition as the ſame now are, reaſonable and proper uſe thereof only excepted. As witneſs our hands the ſaid ſecond day of June, one thouſand ſeven hundred and ninety-ſix.

Witneſs, *Ab. Potts*,
W. Simpſon. *Chriſt. Doe.*

An Inventory to which the above Agreement refers (a).

In the front room, one pair of ſtairs.

8 Mahogany chairs with hair bottoms
1 Mahogany dining table
1 Pembroke table
2 Fire ſkreens
3 Feſtoon cotton window curtains
A Wilton carpet, 3 yards by $2\frac{1}{2}$

In the back room, ditto.

A four-poſt bedſtead and bed, cotton furniture, white counterpane, 2 blankets, 2 pair ſheets and mattraſs. (*and ſo on as the caſe may be*).

Witneſs, *Ab. Potts*,
W. Simpſon, *Chriſt. Doe.*

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3. *An Agreement for a Leaſe of a Piece of Ground and Orchard, for the Term of five Years (b).*

MEMORANDUM made this tenth day of December, in the year of our Lord one thouſand ſeven hundred and ninety-ſix, between *John Sykes*, of *Eling*, in the county of *Surry*, gent. and *William Fleet*, of the ſame place, gent. as follows; that is to ſay,

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(a) This inventory muſt be written on a 2s. 6d. ſtamp.
(b) This muſt be written on a 7s. Agreement ſtamp.

The ſaid *John Sykes* in conſideration of the rent and agreements hereinafter mentioned, doth agree to demiſe and let, by a good and ſufficient leaſe in the law thereof, unto the ſaid *William Fleet*, on or before the day of now next, ALL that field, piece, or parcel of meadow ground, containing by eſtimation ſix acres, more or leſs, ſituate at *Eling* aforeſaid, now in the occupation of the ſaid *William Fleet*, as tenant at will thereof, adjoining to a houſe and grounds now or late of *Peter Melliſh*, eſq. and alſo all that orchard adjoining to the aforeſaid field, containing by eſtimation two acres, more or leſs, late in the occupation of *Humphry Nichols*, gardener, together with all ways, paths, paſſages, waters, water-courſes, eaſements, privileges, and appurtenances whatſoever, to the ſame belonging or appertaining, or therewith held, uſed, occupied, poſſeſſed, or enjoyed, reputed, taken or known as part, parcel, or member thereof, or any part thereof, TO HOLD the ſame for the term of five years from Lady-day laſt paſt, at and under the yearly rent of twenty pounds, payable quarterly; the firſt payment thereof to be made at Midſummer now next enſuing the date thereof; and by the ſaid leaſe full and free liberty ſhall be granted unto the ſaid *William Fleet*, to lop and plaſh the trees and hedges on the ſaid demiſed premiſes, at ſeaſonable and convenient times, and alſo liberty to erect upon the ſame any ſhed or ſheds, or other convenient buildings during the ſaid term, he the ſaid *William Fleet*, from time to time ſcouring and cleanſing the ditches, and repairing and making good the fences, hedges, and gates, upon and belonging to the ſaid premiſes, AND the ſaid *William Fleet* doth agree to take the aforeſaid premiſes for the ſaid term, and the ſaid rent, payable in manner aforeſaid, and to execute a counterpart of the leaſe to be thereof granted. In witneſs, *&c.*

Witneſs,
Giles Moon.

John Sykes.
Wm. Fleet.

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4. *An Agreement between a Landlord and Tenant for building a new Houſe in the room of an old one to be pulled down, —the preſent Leaſe to be ſurrendered, and a freſh one granted for the remainder of the ſubſiſting Term* (*a*).

ARTICLES of agreement entered into this fourteenth day of February, in the year of our Lord one thouſand ſeven hundred

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(*a*) This agreement being under the *ſeal* of the parties, muſt be written on a *Deed* ſtamp, amounting to 7*s*.

and ninety-four, BETWEEN *Robert Kent*, and *John Key*, of *Cecil-Street*, in the *Strand*, eſquires, (executors and truſtees named in the laſt will and teſtament of *Richard Comins*, late of the ſame place, eſquire, deceaſed, for and on behalf of *Roger Comins*, an infant), of the one part, and *Elizabeth Manners*, of *Sloane-Street*, in the county of *Middleſex*, widow, of the other part.

WHEREAS the ſaid *Elizabeth Manners* is tenant for the remainder of an unexpired term of thirty-one years, commencing on the twenty-fifth day of December, which was in the year one thouſand ſeven hundred and eighty-one, of a certain meſſuage, or public houſe, known by the name of the Gooſe and Gridiron, in *Harpur-Street*, in the ſaid county of *Middleſex*, (part of the eſtates of the ſaid infant), at the net yearly rent of twenty-four pounds, late in the occupation of *Thomas Ball*, as under-tenant of the ſaid *Elizabeth Manners*, at the net yearly rent of forty pounds. AND WHEREAS the ſaid meſſuage has lately been irreparably damaged by accidental fire, and the ſaid *Robert Kent* and *John Key* being adviſed that it is neceſſary and proper under the circumſtances of the caſe, the ſame ſhould be rebuilt for the ſaid *Elizabeth Manners*, on the terms and conditions herein after mentioned, have agreed to rebuild the ſame accordingly. Now WITNESS theſe preſents, that it is hereby agreed by and between the ſaid *Robert Kent* and *John Key*, on the part of the ſaid infant as aforeſaid, and the ſaid *Elizabeth Manners*, that they the ſaid *Robert Kent* and *John Key*, or the ſurvivor of them, his heirs, executors, or adminiſtrators ſhall and will, on or before the twenty-fifth day of December now next enſuing, or as ſoon thereafter as may be, erect and finiſh, or cauſe to be erected and finiſhed, a good and ſubſtantial private brick dwelling houſe, upon the ſcite, and in the room of the ſaid public houſe ſo damaged by fire as aforeſaid, with all neceſſary appurtenances thereto, agreeably to a plan and elevation thereof accompanying theſe preſents, marked with the letter A and ſigned by the parties hereto, (the ſaid houſe ſo to be erected, to be finiſhed as to inſide conveniences, ornaments, and decorations thereof, according to the directions of *Henry Hammond*, of *Sloane-Street* aforeſaid, on the part of *Elizabeth Manners*, her executors, adminiſtrators, or aſſigns, and *Philip Norman*, of *Caſtle-Street, Holborn*, on the part of the ſaid *Robert Kent* and *John Key*), and alſo ſhall and will, when the ſaid houſe with the appurtenances ſhall be ſo erected and finiſhed, grant a good and effectual demiſe or leaſe thereof unto the ſaid *Elizabeth Manners*, her executors, adminiſtrators, and aſſigns, TO HOLD unto the ſaid *Elizabeth Manners*, her executors, adminiſtrators, and aſſigns, from the ſaid twenty-fifth day of December now next enſuing, or ſuch other time as aforeſaid, for the term of nineteen years thence next enſuing, at and under the yearly rent of five pounds for every one hundred pounds, which ſhall be neceſſarily and reaſonably expended by the ſaid

Robert Kent and *John Key*, or the ſurvivor of them, his heirs, executors, or adminiſtrators, in erecting and finiſhing the ſame, fit for the reception and habitation of the ſaid *Elizabeth Manners*, or her aſſigns, and which rent is to be clear of all manner of taxes and aſſeſſments whatever, land-tax only excepted: the amount of ſuch expenditure to be aſcertained and ſettled by the ſaid *Philip Norman* on the part of the ſaid *Robert Kent* and *John Key*, and the ſaid *Henry Hammond* on the part of the ſaid *Elizabeth Manners*, or ſuch other perſons being builders or ſurveyors, as the ſaid *Robert Kent* and *John Key*, on the one part, and *Elizabeth Manners*, on the other, ſhall ſeverally appoint, and in caſe of difference between the ſaid builders or ſurveyors, then by one other perſon or umpire, to be by them appointed, the determination in either caſe to be made by the ſaid appointees, or umpire, within fourteen days after reference to them made, the ſaid rent to be paid and payable half yearly, on the days and times whereon the rent in the now ſubſiſting leaſe of the ſaid *Elizabeth Manners* is reſerved. And the ſaid *Elizabeth Manners*, for herſelf, her executors, adminiſtrators, and aſſigns, doth conſent and agree to accept and take the ſaid houſe and premiſes ſo to be erected and finiſhed as aforeſaid, on the terms and conditions before mentioned, and to execute a counterpart of the leaſe to be to her and them granted thereof, and to ſurrender and give up her ſaid now ſubſiſting leaſe, and all her eſtate and intereſt therein. AND it is further agreed between the ſaid parties, that the ſaid *Elizabeth Manners* ſhall be diſcharged from the payment of rent reſerved on her ſaid now ſubſiſting leaſe, from Michaelmas laſt until the ſaid twenty-fifth day of December next, or ſuch other time thereafter as the ſaid houſe to be erected, ſhall, with the appurtenances, be in a tenantable condition, and fit for habitation; and in the ſaid leaſe ſo to be granted of the ſaid new erected houſe and premiſes, there ſhall be contained an allowance of land-tax in favour of the ſaid *Elizabeth Manners*, and all ſuch other covenants, clauſes, proviſoes, and agreements (ſuch only excepted as may tend to vary the terms of this agreement,) as are inſerted in the now ſubſiſting leaſe of the ſaid *Elizabeth Manners*.

In Witneſs whereof, the ſaid parties to theſe preſents have hereunto ſet their hands and ſeals, the day and year firſt above written.

Robert Kent. (Seal.)
John Key. (Seal.)
Eliz. Manners. (Seal.)

Sealed and delivered by the ſaid *Robert Kent* and *John Key*, in the preſence of us
Peter Simpkins, Temple-Bar.
Samuel Fleet, Great James-Street.

Sealed and delivered by the ſaid *E. Manners*,
in the preſence of *Henry Jacobs, Sloane-Street, Chelſea.*
Samuel Fleet.

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5. *An Agreement for Tenant to ſurrender Public Houſe to his Landlord within a given Time, (the ſaid Houſe being at preſent in Mortgage)* (*a*).

MEMORANDUM of an agreement made the eleventh day of December, one thouſand ſeven hundred and ninety-ſix, BETWEEN *Thomas Verts*, now or late of the *Lion and Dog Public Houſe*, in *Carey-Street*, near *Lincoln's Inn*, *London*, and *Elizabeth Matloch*, of *Sloane-Street*, *Chelſea*, in the county of *Middleſex*, Widow, as follows:——The ſaid *Thomas Verts* DOTH hereby covenant and agree to aſſign and ſurrender, or procure to be aſſigned and ſurrendered unto the ſaid *Elizabeth Matloch*, on or before the twentieth day of January, now next coming, the meſſuage or tenements, and public houſe, called the *Lion and Dog*, now or lately tenanted by him in *Carey-Street* aforeſaid, with the appurtenances (freed and diſcharged of and from all mortgages and other incumbrances), and all his term, eſtate, and intereſt therein. AND the ſaid *Elizabeth Matloch* doth hereby agree to accept the ſame (all rent and arrears of rent being paid up to Chriſtmas next), and to diſcharge the ſaid *Thomas Verts* from his covenant to repair the ſaid houſe and premiſes. As Witneſs our hands the day and year above written.

Witneſs, *Thomas Verts.*
Thomas Poole. *Elizabeth Matloch.*

No. II. *LEASES.*

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1. *Leaſe of a Houſe in* London, *with all proper Covenants* (*b*).

THIS Indenture made the firſt day of January, in the thirty-ſecond year of the reign of our ſovereign Lord *George* the third, by the Grace of God of Great Britain, France, and Ire-

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(*a*) This muſt be written upon a 7s. Agreement ſtamp.

(*b*) To be written on a 7s. Deed ſtamp.—This leaſe and the

land, King, Defender of the Faith, and ſo forth, and in the year of our Lord one thouſand ſeven hundred and ninety-ſix,

Parties. BETWEEN *James Fenwick*, of *Dulwich*, in the county of *Surry*, gent. of the one part, and *Thomas Carr*, of *Fleet-Street*, in the city of *London*, Grocer, of the other part, WITNESSETH that for and in conſideration of the yearly rent herein after reſerved, and of the covenants, proviſoes, and agreements herein after contained by and on the part of the ſaid *Thomas Carr*, his executors, adminiſtrators, and aſſigns, to be paid, obſerved, and performed, he the ſaid *James Fenwick* HATH demiſed and leaſed, and by theſe preſents DOTH demiſe and leaſe (*a*) unto the ſaid *Thomas Carr*, his executors, adminiſtrators, and aſſigns, ALL (*b*) that meſſuage or tenement and dwelling houſe, ſituated and being on the north ſide of *Fleet-Street*, in the city of *London*, now or late in the occupation of *John Bate*, his under-tenant, aſſignee, or aſſigns, and abutting on the eaſt end thereof, on a meſſuage or tenement, now or late in the occupation of *Thomas Sell*, his aſſignee, or aſſigns, and on the weſt end thereof, on a gate-way leading to certain premiſes known by the name of the *Swan-Inn*, now or late in the occupation of *Elizabeth Cole*, her aſſignee, or aſſigns, together with all rooms, vaults, cellars, areas, yards, ways, paſſages, drains, pipes, water-courſes, advantages, conveniences, hereditaments, and appurtenances whatſoever, to the ſaid meſſuage or tenement and premiſes belonging or in any wiſe appertaining. TO HAVE AND TO HOLD the ſaid meſſuage or tenement and premiſes hereby demiſed, or mentioned ſo to be, with their appurtenances, unto the ſaid *Thomas Carr*, his executors, adminiſtrators, and aſſigns, from the twenty-fifth day of December laſt paſt, for and during and unto the full end and term of

Demiſe.

Premiſes.

General words.

Habendum for 21 years.

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next, with the following aſſignment, are drawn with peculiar neatneſs and perſpicuity, all unneceſſary circumlocutions are being purpoſely omitted; they were ſettled in their preſent form by an eminent Conveyancer now in practice, who was himſelf the landlord of the premiſes.

(*a*) The words uſually inſerted in leaſes are, "Demiſe, leaſe, ſet and to farm let." But the third of theſe words is obſolete, according to its modern acceptation, and the laſt more applicable to a leaſe of *lands*. Sometimes the word "grant," precedes the word "demiſe," in which caſe the covenants for the title and for quiet enjoyment need not, in ſtrictneſs, be inſerted, as the legal import of the words "grant and demiſe," are held to imply thoſe covenants. 4 *Co.* 80.

(*b*) The deſcription of the premiſes ſhould be as full and accurate as poſſible, to prevent diſputes, which might elſe ariſe as to the extent of the demiſe.

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twenty-one years thence next enſuing, and fully to be complete and ended (determable nevertheleſs at the end of the firſt ſeven or fourteen years thereof, upon ſuch notice for that purpoſe being given, as herein after is mentioned). He the ſaid *Thomas Carr*, his executors, adminiſtrators, and aſſigns, YIELDING AND PAYING yearly and every year during the ſaid term, for ſuch tenure and occupation of the ſaid premiſes, unto the ſaid *James Fenwick*, his executors, adminiſtrators, and aſſigns, the net yearly rent or ſum of fifty pounds of lawful money of Great Britain, the ſame to be paid by equal quarterly payments on the ſeveral days following: namely, on the twenth-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year (ſave and except all times during the ſaid term, ſuch proportionable part of the ſaid yearly rent of fifty pound, as ſhall or may at any time or times grow due, during ſuch time as the meſſuage or tenement hereby demiſed, ſhall without the hindrance of the ſaid *Thomas Carr*, his executors, adminiſtrators, or aſſigns, remain uninhabitable by reaſon of accidental fire), and to be clear of all and all manner of parliamentary, parochial, and other taxes, aſſeſſments, rates, and deductions whatſoever; the firſt quarterly payment thereof to begin and be made on the twenty-fourth day of June next enſuing the date of theſe preſents. AND the ſaid *Thomas Carr* doth hereby for himſelf, his executors, adminiſtrators, (*a*) and aſſigns, covenant, promiſe, and agree to and with the ſaid *James Fenwick*, his executors, adminiſtrators, and aſſigns, in manner following, (that is to ſay) that he the ſaid *Thomas Carr*, his executors, adminiſtrators, or aſſigns, ſhall and will yearly and every year during the continuance of the ſaid term hereby demiſed (ſave and except as aforeſaid), well and truly pay or cauſe to be paid unto the ſaid *James Fenwick*, his executors, adminiſtrators, or aſſigns, the ſaid yearly rent or ſum of fifty pounds of lawful money of Great Britain, on the ſeveral days, and in the manner the ſame is herein before made payable. AND ALSO ſhall and will well and truly pay or cauſe to be paid all and all manner of taxes, rates, aſſeſſments, and impoſitions whatſoever, parliamentary, parochial, or otherwiſe (land tax only ex-

Determinable at the end of the firſt 7 or 14 years thereof.

At the yearly rent of 50*l.*

Exception as to fire.

Covenant from leſſee to pay rent;

and taxes, (except land-tax.)

(*a*) The preſent leſſor of theſe premiſes was himſelf only leſſee of the proprietor of the eſtate, the tenant therefore covenants with the *executors* and *adminiſtrators* of the leſſor, becauſe they are the perſons, who in caſe of his deceaſe would be entitled to the reſidue of the term; but had the leſſor been owner of the inheritance, the tenant muſt have covenanted with his *heirs* and *aſſigns*. This obſervation will apply to all the ſubſequent covenants.

cepted), which now are, or which shall at any time during the continuance of the said term hereby demised, be rated, taxed, assessed, or imposed on the said demised premises, or on any part thereof, or on the said yearly rent hereby reserved, or any part thereof, or on the said *Thomas Parr*, his executors, administrators, or assigns, on account thereof. AND ALSO that he the said *Thomas Carr*, his executors, administrators, and assigns, shall and will at his and their own proper costs and charges, cause to be well and sufficiently painted, all the outside wood and iron work belonging to the said messuage or tenement and premises hereby demised, every third year during the continuance of the said term of twenty-one years, and at his and their like proper costs and charges, shall and will at all times during the continuance of the said term, keep in a good sufficient and tenantable state of repair as well all and singular the glass and other windows, wainscots, rooms, floors, partitions, ceilings, tilings, walls, rails, fences, pavements, grates, privies, sinks, drains, wells, and water courses, as also all and every other the parts and appurtenances of the said messuage or tenement and premises hereby demised (damages happening by casual fire only excepted). AND at the end or other sooner determination of the said term hereby granted, shall and will leave and yield up unto the said *James Fenwick*, his executors, administrators, or assigns, all and singular the same messuage or tenement and premises, with every of their appurtenances, in such good, sufficient, and tenantable state of repair as aforesaid (*a*), Together with all and every the doors, locks, keys, bolts, bars, chimney-pieces, dressers, shelves, water-pipes, and other things mentioned in an inventory or schedule hereunder written, or hereunto annexed, in as good plight and condition as the same now are (reasonable use and wear thereof and casualties happening by fire only excepted.) AND FURTHER that it shall be lawful, for the said *James Fenwick*, his executors, administrators, and assigns, either alone, or with workmen or others, twice in every year (at such times of the year as to him or them shall seem meet) during the said term hereby granted, at seasonable times of the day to enter into and upon the said premises hereby demised, and every part thereof, and there to view and examine the state and condition thereof, notice of such view being at all times previously given unto the said *Thomas Carr*, his executors, administrators, or assigns, one day at least before the same shall take place. And in case any decays or want of reparation be found at any such examination and review, the said *Thomas Carr*, for himself, his execu-

Covenant that lessee will paint outside of house every 3d year;

and do all other repairs;

and quit at the end of the term;

and leave the premises in good repair, together with the things mentioned in an inventory.

Power for lessor to view state of repairs,

after notice.

(*a*) This covenant is not broken by the *ordinary and natural* decay of the premises.

tors, adminiſtrators, and aſſigns, doth hereby covenant, promiſe, and agree to and with the ſaid *James Fenwick*, his executors, adminiſtrators, and aſſigns, to cauſe the ſame to be well and ſufficiently repaired and amended within the ſpace of ſix months after notice thereof in writing ſhall have been given to him or them for that purpoſe. PROVIDED ALWAYS, and theſe preſents are upon this expreſs condition nevertheleſs, that if the ſaid yearly rent or ſum of fifty pounds hereby reſerved, or any part thereof ſhall be in arrear and unpaid for the ſpace of twenty-one days next after any of the ſaid days whereon the ſame is herein before covenanted to be paid as aforeſaid (it being firſt lawfully demanded, or if the ſaid *Thomas Carr*, his executors, adminiſtrators, or aſſigns, ſhall not well and truly obſerve and keep according to the true intent and meaning of theſe preſents, all and every the covenants, clauſes, proviſoes, and agreements, by him and them to be obſerved and kept, then and from thenceforth in either of the ſaid caſes, it ſhall be lawful for the ſaid *James Fenwick*, his executors, adminiſtrators, and aſſigns, to re-enter into the ſaid hereby demiſed premiſes (*a*), or into any part thereof in the name of the whole, and the ſame to have again, re-poſſeſs, retain and enjoy, as his and their former eſtate, and the ſaid *Thomas Carr*, his executors, adminiſtrators, and aſſigns, and all other tenants and occupiers of the ſaid premiſes, thereout utterly to eject and amove, and that from and after ſuch re-entry made, this leaſe, and every clauſe and thing herein contained ſhall determine and be utterly void to all intents and purpoſes, any thing herein contained to the contrary thereof in any wiſe notwithſtanding. AND the ſaid *James Fenwick* for himſelf, his executors, adminiſtrators, and aſſigns, doth covenant, promiſe, and agree to and with the ſaid *Thomas Carr*, his executors, adminiſtrators, and aſſigns, by theſe preſents, in the manner following, (that is to ſay) that he the ſaid *James Fenwick*, his executors, adminiſtrators, and aſſigns, paying the yearly rent hereby reſerved in the manner aforeſaid, and performing the covenants and agreements herein contained, and by him and them to be performed, ſhall and lawfully may peaceably and quietly hold, occupy, and enjoy the meſſuage or tenement, and all other the premiſes hereby demiſed, for and during the ſaid term of twenty-one years hereby granted, without any lawful (*b*) action, ſuit, or interruption of the ſaid *James Fenwick*, his executors, adminiſtrators, or aſſigns, or any other perſon law-

Proviſo that leſſor may re-enter on non-payment of rent, &c.

Covenant from leſſor that leſſee ſhall quietly enjoy the demiſed premiſes,

(*a*) See ante, p. 58. and 6 *Term Rep.* 458.

(*b*) Though the covenant uſually runs as againſt the *lawful* acts, &c. of the party, yet any *tortious* act done with a view of diſturbing the poſſeſſion, will be equally a breach of the covenant. 1 *Term Rep.* 671.

free from the original leaſe whereby the leſſor holds.

ſully claiming by, from, or under him, them, or any of them (*a*). And that freed and diſcharged, or otherwiſe, by the ſaid *James Fenwick*, his executors, adminiſtrators, and aſſigns, ſaved harmleſs and indemnified from the rent and covenants reſerved and contained in a certain indenture of leaſe bearing date the tenth day of Auguſt, in the year of our Lord one thouſand ſeven hundred and ninety, whereby the ſaid *James Fenwick* holdeth the ſaid meſſuage and premiſes hereby demiſed from the date thereof for the term of ſixty-one years, and from all claims and demands whatſoever in reſpect thereof. AND the ſaid *James Fenwick* doth hereby further covenant, promiſe, and agree to and with the ſaid *Thomas Carr*, his executors, adminiſtrators, and aſſigns, that the ſaid *James Fenwick*, his executors, adminiſtrators, and aſſigns, ſhall and will before the expiration of this preſent leaſe, on the requeſt, and at the coſts and charges of the ſaid *Thomas Carr*, his executors, adminiſtrators, and aſſigns, grant and execute unto him and them a new and freſh leaſe of the meſſuage or tenement, and all other premiſes hereby demiſed, with their appurtenances, for the further term of ten years, to commence from the expiration of the term hereby granted, the ſame to be at the ſame yearly rent, payable in the like manner, and under and ſubject to the like covenants, proviſoes, and agreements (except a covenant for renewal thereof at the end of ſuch further term), as are contained in theſe preſents, ſuch new leaſe however to be granted and to be valid only on condition that the ſaid *Thomas Carr*, his executors, adminiſtrators, or aſſigns, do execute a counterpart thereof, and alſo pay unto the ſaid *James Fenwick*, his executors, adminiſtrators, or aſſigns, the ſum of twenty pounds of lawful money of Great Britain, at the time of executing the ſaid leaſe, as a premium for the renewal thereof. AND ALSO that if the ſaid *Thomas Carr*, his executors, adminiſtrators, and aſſigns, ſhall be deſirous to quit the ſaid meſſuage and premiſes hereby demiſed at the end of the firſt ſeven or the firſt fourteen years of the term of twenty-one years hereby granted, thereof, and of ſuch his or their deſire ſhall give notice in writing to the ſaid *James Fenwick*, his executors, adminiſtrators, or aſſigns, ſix calendar months before the expiration of the ſaid firſt ſeven or fourteen years (as the caſe may be), then and in ſuch caſe (all arrears of rent being duly paid, and the

Covenant for renewal of leaſe,

and for determination of this preſent leaſe at the end of the firſt ſeven or fourteen years thereof, at the option of the leſſee.

(*a*) Perſons claiming under another are thoſe who come in by a privity of title, as *heir*, *executor*, or *aſſignee*, and though the covenant were in its *terms* made to extend to all perſons whatſoever, yet thoſe ſeem to be the only perſons who would be bound by it. See *Cro. Eliz.* 615. 3 *Term Rep.* 584.

ſaid meſſuage and all other the premiſes hereby demiſed, being in ſuch repair as they are herein before covenanted to be maintained in and left), this leaſe and every clauſe and thing herein contained ſhall at the expiration of ſuch firſt ſeven or firſt fourteen years of the ſaid term of twenty-one years hereby granted, (whichever in the ſaid notice be expreſſed) determine and be utterly void to all intents and purpoſes, in like manner as if the whole term of twenty-one years had run out and expired, any thing in theſe preſents contained to the contrary thereof notwithſtanding. In witneſs whereof the ſaid parties have hereunto ſet their hands and ſeals the day and year firſt above written.

James Fenwick. (Seal.)
Thomas Carr. (Seal.)

Sealed and delivered in the preſence of
William Teers, of *Gray's-Inn.*
Thomas Sykes, Clerk to Mr. *Teers.*

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2. *Leaſe of Meſſuage and Lands in the* Country *from Tenant for Life, under a Marriage Settlement* (*a*).

THIS INDENTURE made the twenty-fourth day of March, in the thirty-ſecond year of our Sovereign Lord George the Third, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, &c. and in the year of our Lord Chriſt, one thouſand ſeven hundred and ninety-two, BETWEEN *Mary Plumber*, of (widow of *Chriſtopher Plumber*, late of the ſame place, Eſq. deceaſed,) of the one part, and *Charles Clay*, of Gent. of the other part, WITNESSETH that the ſaid *Mary Plumber*, by virtue of a power to her in that behalf given in and by certain indentures of leaſe and releaſe, dated reſpectively on or about the twenty-fourth and twenty-fifth day of June, in the year one thouſand ſeven hundred and ſeventy-two, (being the ſettlement made on her marriage with the ſaid *Chriſtopher Plumber*, deceaſed,) and for and in conſideration of the rents, covenants, and agreements, herein after reſerved and contained on the part of the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, to be paid and performed, HATH demiſed, leaſed, and to farm letten, and by theſe preſents DOTH demiſe, leaſe, and to farm let unto the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, ALL

Parties.

The demiſe.

(*a*) This muſt be written on a 7*s*. Deed ſtamp.

that meſſuage or tenement and farm called the Grange Farm, with the yard, barns, ſtables, buildings, out-houſes and appurtenances thereunto belonging, and alſo all thoſe ſeveral fields, cloſes, and parcels of arable, meadow and paſture land thereunto belonging, and herein after particularly deſcribed (that is to ſay), ALL that piece or parcel of paſture-ground called the *Spring Cloſe*, containing by eſtimation ſeven acres, be the ſame more or leſs, &c. &c. together with all ways, commons, waters, profits, and advantages whatſoever, to the ſaid meſſuage or tenement, farm and premiſes, belonging or appertaining, EXCEPT and always reſerved out of theſe preſents unto the ſaid *Mary Plumber*, and her aſſigns, during ſuch part of the term hereby demiſed, as ſhe ſhall live, and from and after her deceaſe, unto ſuch perſon or perſons as ſhall from thenceforth, during the remainder of the ſaid term, be entitled to the freehold and inheritance of the ſaid premiſes, all timber and other trees now ſtanding and being, or which ſhall at any time, during the continuance of this demiſe, ſtand or be upon the ſaid demiſed premiſes (other than ſuch as are hereinafter agreed to be allowed the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, for boot), with free liberty of ingreſs, egreſs, and regreſs, for the ſaid *Mary Plumber*, and her aſſigns, or ſuch other perſon or perſons as ſhall be entitled as aforeſaid, her and their agents and workmen, with horſes, carriages, and otherwiſe, to and from any part of the ſaid hereby demiſed premiſes, to cut down and carry away the ſaid trees, making reaſonable ſatisfaction unto the ſaid *Charles Clay*, his executors, adminiſtrators, or aſſigns, for any damage he or they may ſuſtain thereby, and alſo free liberty at all times to view the ſtate of the trees upon the ſaid premiſes. TO HAVE AND TO HOLD the ſaid meſſuage or tenement, farm, lands, and premiſes hereby demiſed or mentioned ſo to be, unto the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, from the fifth day of April laſt paſt, for and during the term of twenty-one years, from thence next enſuing, and fully to be complete and ended. He the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, YIELDING AND PAYING for ſuch tenure and occupation of the ſaid premiſes, unto the ſaid *Mary Plumber*, and her aſſigns, or unto ſuch other perſon or perſons as may be entitled as aforeſaid, the yearly rent or ſum of one hundred pounds of lawful money of Great Britain, the ſame to be paid by equal quarterly payments on the ſeveral days following: namely, on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year, by equal portions, the firſt quarterly payment thereof to begin and be made on the twenty-fourth day of June next enſuing the date of theſe preſents. AND ALSO YIELDING AND PAYING by like equal portions on the ſeveral days aforeſaid, an additional

Parcels.

Exception of timber.

Habendum for twenty-one years.

Reſervation.

Penalty for ploughing paſture.

yearly rent or ſum of five pounds of like lawful money for every acre, and proportionably for any greater or leſs quantity than an acre of the paſture or meadow ground hereby demiſed, which at any time during the continuance of this demiſe ſhall be ploughed up or converted into tillage, without the conſent in writing of the ſaid *Mary Plumber*, or ſuch other perſon or perſons as ſhall be entitled as aforeſaid, firſt obtained for that purpoſe. AND the ſaid *Charles Clay*, for himſelf, his heirs, executors, adminiſtrators, and aſſigns, doth hereby covenant, promiſe, and agree to and with the ſaid *Mary Plumber*, her executors, adminiſtrators, and aſſigns, and alſo to and with the perſon and perſons who ſhall be entitled to the freehold and inheritance of the premiſes hereby demiſed, from and after her deceaſe for the then reſidue of the term hereby granted his, her, and their heirs, executors, adminiſtrators, and aſſigns, in manner following: that is to ſay, that he the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, ſhall and will well and truly pay, or cauſe to be paid, unto the ſaid *Mary Plumber*, or her aſſigns, during ſuch part of the ſaid term hereby demiſed as ſhe ſhall live, and after her deceaſe unto ſuch perſon or perſons as may then be entitled to the ſaid premiſes as aforeſaid, his, her, or their executors, adminiſtrators, or aſſigns, the ſaid yearly rent or ſum of one hundred pounds of lawful money of Great Britain, and alſo all other the rent and rents, ſum and ſums of money, herein before reſerved, on the days herein before appointed for payment thereof, as the ſame ſhall from time to time grow due; the ſaid rents or ſums to be clear of all manner of deductions whatſoever, for or on account of any taxes, rates, aſſeſſments, or other impoſitions. AND further that he the ſaid *Charles Clay*, his executors, adminiſtrators, or aſſigns, ſhall and will, at his and their own proper coſts and charges, at all times during the continuance of this demiſe, maintain and keep the ſaid meſſuage or tenement, outhouſes, and buildings hereby demiſed, and the walls, hedges, fences, gates, ſtiles, bridges, and incloſures thereunto belonging, in good and ſufficient repair in all reſpects, damages happening by caſual fire only excepted, he and they being allowed rough timber on the ſtem, bricks, tiles, and lime for the doing thereof; and ſhall and will, at the end or other ſooner determination of the ſaid term, peaceably and quietly leave and yield up the ſame premiſes unto the ſaid *Mary Plumber*, or her aſſigns, or unto ſuch other perſon or perſons as ſhall then be entitled thereto, in ſuch good and ſufficient repair as aforeſaid. And further that it ſhall be lawful for the ſaid *Mary Plumber*, and her aſſigns, during ſuch part of the ſaid term hereby demiſed as ſhe ſhall live, and after her deceaſe, for ſuch perſon or perſons as ſhall then be entitled as aforeſaid, with workmen or otherwiſe, twice in every year during the ſaid term, at ſeaſonable times in the day time, to enter into and

Covenant from leſſee to pay the rent.

Covenant from leſſee to repair, materials being allowed by leſſor.

Covenant from leſſee that it ſhall be lawful for leſſor to view ſtate of repairs.

upon the ſaid premiſes hereby demiſed, and every part thereof, there to view and examine the ſtate and condition thereof, notice of ſuch review being at all times previouſly given unto the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, one day at leaſt before the ſame ſhall take place; and in caſe of any decays or want of reparation being found at any ſuch review, the ſaid *Charles Clay*, for himſelf, his executors, adminiſtrators, and aſſigns, doth hereby covenant, promiſe, and agree to and with the ſaid *Mary Plumber*, and her aſſigns, and to and with ſuch other perſon or perſons as may be entitled to the ſaid premiſes after her deceaſe, his, her, and their heirs and aſſigns, to cauſe the ſame to be well and ſufficiently repaired and amended within the ſpace of ſix months after notice in writing ſhall be given to him or them for that purpoſe, rough timber, bricks, tiles, and lime, being allowed him and them for the doing thereof as aforeſaid. AND FURTHER THAT he the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, ſhall and will at all times during the continuance of this demiſe, ſpread and beſtow in an huſband-like manner upon the lands and grounds hereby demiſed, all the compoſt and dung which ſhall from time to time be made on the ſaid premiſes, by fodder of cattle or otherwiſe, except only ſuch compoſt or dung as ſhall be made in the laſt year of this demiſe, which the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, ſhall leave upon the premiſes for the ſaid *Mary Plumber*,, or her aſſigns, or ſuch other perſon or perſons as aforeſaid, without being allowed any thing for the ſame. AND FURTHER THAT he the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, ſhall not nor will at any time during this demiſe, ſow or crop any of the arable land hereby demiſed, with any grain or ſeed except clover, more than two ſucceſſive years together, without permitting the ſame to have a ſummer's fallow; nor ſhall nor will croſs crop any of the ſaid arable lands during the ſaid term; nor mow any of the paſture ground hereby demiſed more than once in any one year of the ſaid term; but ſhall and will during this demiſe, plow, ſow, manure, and manage all the lands and grounds hereby demiſed in a due and regular courſe of huſbandry, according to the cuſtom of the neighbouring country. AND further that he the ſaid *Charles Clay*, his executors, adminiſtrators, or aſſigns, ſhall not nor will at any time during the continuance of this demiſe, do, or cauſe or voluntarily ſuffer to be done, any manner of waſte or deſtruction in or upon any part of the premiſes hereby demiſed; but ſhall and will at all times during the ſaid term preſerve from the browſe of cattle, and other avoidable injury all the young trees and underwood growing upon any part of the hereby demiſed premiſes. AND further that he the ſaid *Charles Clay*, his executors, adminiſtrators, or

Covenant from leſſee that he will uſe hay, &c. on premiſes, and ſpread the dung thereon, except laſt year of term.

Covenant from leſſee that he will manage the ground in an huſband-like manner.

Covenant from leſſee that he will preſerve the young timber, and not commit waſte.

Covenant from leſſee that he

aſſigns, ſhall and will in the ſummer immediately preceding the expiration of the term hereby granted, prepare in an huſband-like manner twenty acres of ſuch part of the arable land hereby demiſed, as ſhall be then, in courſe of fallow, fit to be ſown with a crop the enſuing ſeaſon, and alſo lay down with clover ſeed and rye graſs ten acres more of the arable land hereby demiſed, which ſhall be then in tillage, ſowing upon each acre thereof eight pounds of the beſt clover ſeed, and two buſhels of the beſt rye graſs ſeed. AND moreover that he the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, ſhall and will permit, and it ſhall be lawful for the ſaid *Mary Plumber*, or her aſſigns, if living, and for ſuch other perſon or perſons as ſhall be entitled as aforeſaid, in caſe of her deceaſe, his, her, or their aſſigns, from and after the firſt day of February next preceding the determination of this demiſe, with ſervants, horſes, and implements of huſbandry, to enter upon ſuch cloſes and grounds of the ſaid hereby demiſed premiſes as ſhall then be in the courſe of fallow, and plough, till, and manure the ſame for the enſuing crop, without hindrance or moleſtation; and alſo for that purpoſe to take and have the dung and compoſt which ſhall then be in the yard or yards belonging to the ſaid demiſed premiſes. PROVIDED ALWAYS, and theſe preſents are upon this condition nevertheleſs, that if the ſaid rents above reſerved, or any of them, or any part thereof, ſhall be in arrear and unpaid for the ſpace of twenty-one days next after either of the ſaid days whereon the ſame are appointed to be paid as aforeſaid (the ſame being lawfully demanded); or if the ſaid *Charles Clay*, his executors, adminiſtrators, or aſſigns, ſhall not well and truly obſerve and perform all and every the covenants and agreements in theſe preſents contained, on his and their parts to be obſerved and performed, then and from thenceforth, in either of the ſaid caſes, it ſhall be lawful for the ſaid *Mary Plumber*, and her aſſigns, if living, and in caſe of her deceaſe, for the perſon or perſons who ſhall be entitled to the freehold and inheritance of the ſaid premiſes hereby demiſed, to re-enter into the ſame premiſes, or into any part thereof, in the name of the whole, and the ſame to have again, retain, and enjoy, as his, her, or their former eſtate: and the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, and all other tenants and occupiers of the ſaid premiſes, thereout and from thence utterly to expel and remove; and from and after ſuch re-entry made, this leaſe and every thing herein contained ſhall determine and be utterly void to all intents and purpoſes, any thing in theſe preſents contained to the contrary thereof notwithſtanding (*a*). AND the ſaid *Mary Plumber*,

will lay down part of the lands with clover in the laſt year of term.

Covenant from leſſee that he will permit leſſor's aſſignee to enter at Candlemas before the end of term to cultivate.

Proviſo of re-entry in caſe of non-payment of rent, &c.

Covenants from leſſor.

(*a*) Beſides this proviſo for re-entry, there is frequently a co-

for herſelf, her executors, adminiſtrators, and aſſigns, doth covenant, promiſe, and agree to and with the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, in manner following; (that is to ſay) that ſhe the ſaid *Mary Plumber*, or her aſſigns, during ſuch part of the term hereby granted, as ſhe ſhall live, and from and after her deceaſe, ſuch perſon and perſons as ſhall from thenceforth be entitled to the freehold and inheritance of the ſaid demiſed premiſes, for the remainder of the ſaid term, ſhall and will, as often as there ſhall be occaſion during this demiſe, find and allow unto the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, either upon the ſaid premiſes, or within three miles diſtance therefrom, rough timber on the ſtem, bricks, tiles, and lime for the neceſſary repairs of the ſaid meſſuage or tenement, outhouſes, buildings, and premiſes hereby demiſed, with the gates, ſtiles, pales, rails and fences belonging thereto, the ſaid materials to be carried to the places where the ſame are to be uſed at the charge of the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns. AND ALSO that it ſhall be lawful for the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, during the continuance of this demiſe, at ſeaſonable times in the year, to cut and plaſh, in a huſband-like manner, the quick hedges belonging to the ſaid demiſed premiſes, ſaving and preſerving all ſuch young trees therein as may be likely to become timber, and likewiſe to lop the pollard trees growing upon the premiſes hereby demiſed, (ſo that the ſaid hedges, and the ſaid pollard trees reſpectively, be not plaſhed and lopped oftener than once in every year) and employ the wood which ſhall be got from ſuch trees and hedges, to his and their own uſe, provided the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, ſhall well and ſufficiently make up again ſuch hedges, as often as the ſame ſhall be plaſhed, and clear out the ditches belonging thereto, or otherwiſe fence in and preſerve the ſame from the browſe of cattle and other avoidable injury. AND ALSO that he the ſaid *Charles Clay*, his executors, adminiſtrators, and aſſigns, ſhall at any time during this demiſe, except only in the laſt year thereof, have liberty to ſell and diſpoſe of any quantity of hay and ſtraw ariſing from the ſaid premiſes, on his and their ſpreading upon ſuch parts of the ſame premiſes as ſhall ſtand in moſt need of compoſt, one good load of rotten dung for every load of hay or ſtraw that ſhall be carried off the premiſes. AND ALSO that the ſaid *Charles Clay*, his

Covenant from leſſor to provide materials for repairs.

Covenant that leſſee may plaſh the hedges.

Covenant that leſſee may ſell ſtraw if he bring compoſt in the room.

Covenant for peaceable enjoyment.

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venant authorizing the leſſor to diſtrain; but as the law gives him this power as incident to his eſtate, any expreſs proviſion ſeems unneceſſary for that purpoſe.

executors, adminiſtrators, and aſſigns, paying the rents hereinbefore reſerved, and performing the covenants and agreements herein before contained, on his and their parts to be paid and performed, ſhall and lawfully may peaceably and quietly hold and enjoy the ſaid meſſuage or tenement, and other the premiſes hereby demiſed, with their appurtenances, during the term hereby granted, without hindrance or interruption by the ſaid *Mary Plumber*, or her aſſigns, or any other perſon lawfully claiming from or under her, them, or any of them. PROVIDED ALWAYS, and it ſhall moreover be lawful for the ſaid *Charles Clay*, his executors, adminiſtrators, or aſſigns, to determine and make void this preſent leaſe at the expiration of the firſt ſeven or fourteen years of the ſaid term of twenty-one years hereby granted, on his or their cauſing notice in writing of ſuch his or their intention to be given to or left for the ſaid *Mary Plumber*, or her aſſigns, if then living, and in caſe of her deceaſe, to and for ſuch other perſon and perſons as ſhall then be entitled as aforeſaid, at his, her, or their uſual place of abode, ſix calendar months at leaſt before the time mentioned in ſuch notice for determining the ſame, any thing herein before contained to the contrary thereof in any wiſe notwithſtanding. In witneſs, *&c.*

Proviſo empowering leſſee to determine leaſe.

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3. *An Indorſement for continuing the Term of an expiring Leaſe* (*a*).

THIS INDENTURE made the fifth day of December in the thirty-ſecond year of the reign of our ſovereign lord *George* the Third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* and in the year of our Lord *Chriſt* one thouſand ſeven hundred and ninety-two, BETWEEN the within named *John Felton*, of the one part, and the within named *Peter Thomas* of the other part, WITNESSETH, that in conſideration of the rent hereby reſerved, and of the covenants, conditions, and agreements herein contained on the part of the ſaid *Peter Thomas*, his executors, adminiſtrators, and aſſigns, to be paid and performed, the ſaid *John Felton*, doth demiſe and leaſe unto the ſaid *Peter Thomas*, his executors, adminiſtrators, and aſſigns, ALL that piece or

Parties.

(*a*) This requires a ſeven ſhilling Deed ſtamp, notwithſtanding the ſtamp on the leaſe.

parcel of ground with the meſſuage or tenement thereon erected, and all and ſingular other the premiſes, compriſed in the within written leaſe, and thereby demiſed, TO HAVE AND TO HOLD the ſaid piece or parcel of ground and meſſuage, or tenement, and all and ſingular other the premiſes hereby and by the within written leaſe demiſed and leaſed, or mentioned ſo to be, unto the ſaid *Peter Thomas*, his executors, adminiſtrators, and aſſigns, from the twenty-fourth day of *June*, which will be in the year of our Lord one thouſand ſeven hundred and ninety-three, and when the ſaid within written leaſe will expire, for and during, and unto the full end and term of four years thence next enſuing, ſubject to and under the like rent as in the within written leaſe is reſerved, and payable in like manner as therein is mentioned, and ſubject alſo to the like power of re-entry as well on the non-payment of rent, as on the happening of any other of the incidents mentioned in the proviſo for re-entry within written. And it is hereby declared and agreed by and between the parties to theſe preſents, that they and their reſpective executors, adminiſtrators, and aſſigns, ſhall and will, during the continuance of the additional term of four years hereby granted, ſtand and be bound by ſuch, and the like covenants, proviſoes, and agreements as they, their reſpective executors, adminiſtrators, and aſſigns, are now bound by the within written leaſe, in reſpect of the ſaid premiſes thereby and hereby granted, it being the intent and meaning of the parties hereto, that this indorſed leaſe, and the additional term hereby granted, ſhall be upon ſuch and the like footing as the leaſe within written, and that all the covenants, conditions, and agreements contained in the within written leaſe be equally available, and have the like force and effect to all intents and purpoſes, as if the ſame and every thing in the ſaid leaſe contained were again repeated and inſerted in theſe preſents. *In witneſs, &c.*

Habendum.

Sealed and delivered in the preſence of
Charles Bleu, } of *Tunbridge*, *Kent*.
John Simms, }

John Felton (Seal.)
Peter Thomas (Seal.)

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4. *A Covenant to be inſerted in a Leaſe to indemnify the Tenant againſt Accidents by Fire.*

AND LASTLY, it is covenanted and agreed by and between the ſaid parties to theſe preſents, that the ſaid (*tenant*), his executors, adminiſtrators, and aſſigns, ſhall not by virtue hereof, or of any thing herein contained, be chargeable with

any damage which ſhall or may be occaſioned during the term hereby demiſed, by accidental fire, and that accidents by fire are wholly excepted out of the covenant herein before mentioned, for keeping and leaving the ſaid premiſes in repair, and the ſaid (*tenant*), his executors, adminiſtrators, and aſſigns, is not, nor ſhall be conſtrued to be by colour of any clauſe in theſe preſents contained, liable to make good any ſuch accidents or damage occaſioned thereby, but the ſame ſhall be repaired and made good, or, if neceſſary, the premiſes be rebuilt, as ſoon as may be after the happening of ſuch fire, at the expence and charge of the ſaid (*landlord*), his heirs, or aſſigns, any thing in theſe preſents contained to the contrary in any wiſe notwithſtanding.

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5. *A Covenant from Leſſee that he will inſure the Premiſes from Fire, and rebuild them if burnt.*

AND that he the ſaid (*tenant*) his executors, adminiſtrators, and aſſigns, ſhall and will at his and their own proper coſts and charges, from time to time, during the continuance, and until the expiration of the term hereby granted, cauſe to be well and ſufficiently inſured, in ſome or one of the public offices, kept in the cities of London or Weſtminſter, for the purpoſe of inſuring houſes from caſualties by fire, all and every the meſſuages or tenements, erections, and buildings which ſhall be erected and built upon the ſaid piece or parcel of ground hereby demiſed, or upon any part thereof, in the full ſum of five hundred pounds of lawful money of Great Britain; and in caſe the ſaid meſſuages or tenements, erections and buildings, or any of them, or any part of them, ſhall at any time or times during the ſaid term be deſtroyed or damaged by fire, ſhall and will, as often as the ſame may happen, and as ſoon as may be thereafter, cauſe the ſame to be rebuilt or repaired, as occaſion may require, in a good and ſubſtantial manner.

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6. *Covenant that Leſſee will not aſſign the Premiſes to any offenſive Trade.*

AND ALSO, That he the ſaid (*leſſee*), his executors, adminiſtrators, and aſſigns, ſhall not, nor will at any time during the continuance of the ſaid term hereby granted, aſſign or ſet over

the preſent indenture of leaſe, or ſet, let, or aſſign any part of the meſſuage and premiſes hereby demiſed, unto either of the trades or buſineſſes following, that is to ſay, the trade or buſineſs of a Sedan chairmaker, Butcher, Baker, Currier, Soap-boiler, Brewer, Diſtiller, Tallow-chandler, Tallow-melter, Sugar-baker, working Brazier, Tinman, Plumber, Tripe-boiler, Tripe-ſeller, Dyer, Founder, Smith, Pipe-maker, Pipe-borer, or any other noxious or offenſive buſineſs whaſoever, without the conſent in writing of the ſaid (*landlord*), his executors, adminiſtrators, or aſſigns firſt obtained for that purpoſe, nor ſhall nor will, without ſuch conſent as aforeſaid, cauſe to be made any addition or alteration whatever in or about the ſaid meſſuage or tenement and premiſes, or any part thereof.

No. III. *ASSIGNMENTS.*

1. *An Aſſignment of leaſehold Premiſes, from a Mortgagee to a Purchaſer* (*a*).

THIS INDENTURE made the day of in the thirty-fourth year of the reign of our ſovereign Lord *George* the Third, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the Faith, and ſo forth, and in the year of our Lord one thouſand ſeven hundred and ninety-four, BETWEEN *William Johnſon*, (the mortgagee), of &c. of the firſt part, and *Joſeph King*, (the mortgagor), of &c. of the ſecond part, and *Jeremiah Goodright*, (the purchaſer), of &c. of the third part. WHEREAS (*here was recited the leaſe by which the mortgagor held the mortgage deed and bond for ſecuring the ſum of five hundred pounds, formerly lent on the premiſes now aſſigned*), AND WHEREAS the ſaid ſum of five hundred pounds was not paid at the time appointed by the ſaid recited indenture, for payment thereof, whereby the eſtate of the ſaid *William Johnſon* in the ſaid mortgaged premiſes became abſolute in law, AND WHEREAS there is now due to the ſaid *William Johnſon* for principal and intereſt on the ſaid recited bond and mortgage the ſum of five hundred and fifty pounds, AND WHEREAS the ſaid *Jeremiah Goodright* hath contracted

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(*a*) To be engroſſed on a ſeven ſhilling Deed ſtamp.

with the said *Joseph King* for the absolute purchase of the said mortgaged premises for all the residue now to come of the said term of ninety-nine years, granted by the said recited indenture of lease, at the price or sum of seven hundred pounds. NOW THIS INDENTURE WITNESSETH that for and in consideration of the said sum of five hundred and fifty pounds of lawful money of *Great Britain*, in hand, at or before the sealing of these presents, well and truly paid by the said *Jeremiah Goodright* to the said *William Johnson*, (by the direction of the said *Joseph King*, testified by his sealing and delivering hereof), which said sum of five hundred and fifty pounds is in full of all principal and interest money due to the said *William Johnson* on the said recited bond and mortgage, and the receipt of which said sum the said *William Johnson* doth hereby acknowledge, and therefrom discharge the said *Jeremiah Goodright*, and also the said *Joseph King*, their and each of their executors, administrators, and assigns, by these presents, HE the said *William Johnson*, by and with the consent, direction, and appointment of the said *Joseph King*, testified as aforesaid, HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over, unto the said *Jeremiah Goodright*, his executors, administrators, and assigns, the said recited indentures of lease and release, and the said recited bond, and also the messuage or tenement, and all and singular other the hereditaments and premises, with their respective appurtenants in and by the same indentures of lease and release demised and conveyed as aforesaid, or mentioned so to be, and all the estate, right, title, interest, property, term of years, unexpired claim and demand whatsoever, of him the said *William Johnson*, of, in, and to the same premises. by virtue of the said recited indentures, or otherwise, TO HAVE AND TO HOLD the said recited indenture of lease, and indenture of assignment; and also the said piece or parcel of ground, and the messuage or tenement thereon built, and all and singular other the premises hereby assigned, with the appurtenants hereby granted, sold, and assigned, or mentioned so to be, unto the said *Jeremiah Goodright*, his executors, administrators, and assigns, from the day of the date of these presents, for and during all the residue now to come of the said term of ninety-nine years, by the said recited indenture of lease granted. AND the said *William Johnson* for himself, his heirs, executors, and administrators, doth covenant, promise, and agree to and with the said *Jeremiah Goodright*, his executors, administrators, and assigns, by these presents, that he the said *William Johnson*, hath not done, or caused to be done, or knowingly suffered any act or thing whatsoever, whereby the said recited indenture of lease is, or shall, or can be made void, or the said piece or parcel of

Assignment from mortgagee.

Covenant from mortgagee that he has not encumbered.

ground, meſſuage, or tenement, and premiſes hereby aſſigned, or any of them, are or ſhall, or can be charged or incumbered in title, eſtate, or otherwiſe. AND THIS INDENTURE FURTHER WITNESSETH that for and in conſideration of the further ſum of one hundred and fifty pounds of lawful money of *Great Britain*, to the ſaid *Joſeph King*, in hand alſo well and truly paid by the ſaid *Jeremiah Goodright*, at or before the ſealing and delivery of theſe preſents therewith, whereof the ſaid *Joſeph King* doth hereby acknowledge and therefrom doth releaſe and diſcharge the ſaid *Jeremiah Goodright*, his executors, and aſſigns, (which ſaid ſums of five hundred and fifty pounds by the ſaid *Jeremiah Goodright* to the ſaid *William Johnſon* as aforeſaid, and the one hundred and fifty pounds by him now paid to the ſaid *Joſeph King*, making together the ſum of ſeven hundred pounds, are in full of the purchaſe money agreed to be paid by the ſaid *Jeremiah Goodright* for the ſaid premiſes,) he the ſaid *Joſeph King* hath granted, bargained, ſold, releaſed, and confirmed, and by theſe preſents doth grant, bargain, ſell, releaſe, and confirm unto the ſaid *Jeremiah Goodright*, his executors, adminiſtrators, and aſſigns, the ſaid recited indenture of leaſe made and granted to him the ſaid *Joſeph King*, as aforeſaid, and the ſaid piece or parcel of ground, and all and ſingular other the premiſes with the appurtenances in the ſame indenture demiſed, and all the eſtate, right, title, intereſt, profit, property, term of years now to come, equity of redemption, claim and demand whatſoever, of him the ſaid *Joſeph King*, both in law and equity, or otherwiſe, of, in, and to the ſaid leaſe and premiſes, or any part thereof, and all deeds, evidences, and writings touching and concerning the ſaid hereby demiſed premiſes, or any part thereof, now in the cuſtody or power of the ſaid *Joſeph King*, or any other perſon, for his uſe, or in truſt for him, TO HAVE AND TO HOLD the ſaid recited indenture of leaſe, and the ſaid piece or parcel of ground, meſſuage, or tenement thereon built, and all and ſingular other the premiſes with the appurtenants herein before mentioned and expreſſed to be hereby granted and aſſigned as aforeſaid, unto the ſaid *Jeremiah Goodright*, his executors, adminiſtrators, and aſſigns, from henceforth for and during all the reſidue now to come of the ſaid term of ninety-nine years, and the ſaid *Joſeph King* for himſelf, his heirs, executors, and adminiſtrators doth covenant, promiſe, and agree to and with the ſaid *Jeremiah Goodright*, his executors, adminiſtrators, and aſſigns, by theſe preſents, in the manner following, (that is to ſay) that the ſaid recited indenture of leaſe made and granted to him the ſaid *Joſeph King*, as aforeſaid, is at the time of the ſealing and delivering of theſe preſents, a good and valid leaſe, and that the term of years thereby demiſed is now in being, and in no wiſe forfeited, ſurrendered, or any wiſe encumbered,

Aſſignment from mortgagor.

Covenant from mortgagor that leaſe is valid.

(ſave as aforeſaid) and that they, the ſaid *Joſeph King* and *William Johnſon* have in themſelves, or one of them hath in himſelf, good, right, and abſolute authority to grant, bargain, ſell, aſſign, transfer, and ſet over the premiſes meant and expreſſed to be hereby aſſigned, with their appurtenants, unto the ſaid *Jeremiah Goodright*, his executors, adminiſtrators, and aſſigns, in manner aforeſaid, AND that he the ſaid *Jeremiah Goodright*, his executors, adminiſtrators, or aſſigns, ſhall, or lawfully may, for and during all the remainder now to come of the ſaid term of ninety-nine years, by the ſaid recited indenture of leaſe granted, peaceably have, hold, occupy and enjoy all and ſingular the premiſes hereby granted and aſſigned, or mentioned ſo to be, with their appurtenances, without any ſuit, moleſtation, or interruption of them the ſaid *Joſeph King* and *William Johnſon*, or either of them, their or either of their executors, adminiſtrators, or aſſigns, or of any other perſon lawfully claiming from them or any of them, and that free and clear of all former and other grants, aſſignments, mortgages, ſurrenders, and other aſſurances and incumbrances whatſoever, made or knowingly ſuffered to be made by the ſaid *Joſeph King* and *William Johnſon*, or either of them, or which ſhall or may be made by their or either of their executors, adminiſtrators, or aſſigns. AND FURTHER that he the ſaid *Joſeph King*, his executors and adminiſtrators, and all and every other perſon or perſons lawfully claiming from or under him or them, ſhall and will at all times hereafter during the remainder now to come of the ſaid term of ninety-nine years, at the requeſt, coſts, and charges in the law of the ſaid *Jeremiah Goodright*, his executors, adminiſtrators, and aſſigns, make, do, and execute, or cauſe to be made, done, and executed, all ſuch further lawful and reaſonable acts and deeds in the law whatſoever, for the better and more effectually conveying, aſſigning, and aſſuring the ſaid hereby aſſigned premiſes unto the ſaid *Jeremiah Goodright*, his executors, adminiſtrators, and aſſigns, for all the remainder of the ſaid term of ninety-nine years, which ſhall be then to come and unexpired, as the ſaid *Jeremiah Goodright*, his executors, adminiſtrators, or aſſigns, ſhall reaſonably require. AND LASTLY, the ſaid *Jeremiah Goodright*, for himſelf, his executors, adminiſtrators, and aſſigns, doth covenant, promiſe, and agree to and with the ſaid *Joſeph King*, his executors and adminiſtrators, that he the ſaid *Jeremiah Goodright*, his executors, adminiſtrators, and aſſigns, ſome or one of them ſhall and will from time to time during the remainder now to come of the ſaid term of ninety-nine years, pay the ſaid yearly rent of forty pounds by the ſaid recited indenture of leaſe reſerved, at ſuch time and in ſuch manner as by the ſaid indenture the ſame is reſerved and made payable, and ſhall and will perform and

Covenant for quiet enjoyment.

Covenant for further aſſurances.

Covenant from aſſignee to pay rent and perform covenants of leaſe.

obſerve all and every the covenants and agreements therein contained, which on the tenant's part are to be kept and performed. And alſo ſhall and will at all times, ſave and indemnify, and ſave harmleſs the ſaid *Joſeph King*, his executors and adminiſtrators, from all ſuits, damages, and expences whatſoever, which he or they may ſuſtain or be put unto, by reaſon of the non-payment of the ſaid yearly rent, or non-performance of any of the covenants in the ſaid recited indenture of leaſe reſerved and contained. In witneſs whereof the ſaid parties have hereunto ſet their hands and ſeals the day and year firſt within written.

William Johnſon. (Seal.)
Joſeph King. (Seal.)
Jeremiah Goodright. (Seal.)

Sealed and delivered in the preſence of
Henry Caxton, Three Pump Court, Temple.
Thomas Wills, his Clerk.

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2. *Aſſignment of Leaſe and Premiſes by Indorſement* (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within named *William Naile* ſendeth greeting. WHEREAS the within named *William Naile* for the conſiderations hereinafter mentioned, hath agreed to aſſign over unto *Joſiah James*, now or late ſervant to *Elizabeth Long*, of *Saville Row*, in the county of *Middleſex*, Widow, his executors, adminiſtrators, and aſſigns, the within mentioned meſſuage, or tenement and premiſes NOW theſe preſents WITNESS, that in purſuance of the ſaid agreement, and for and in conſideration of the ſum of five pounds of lawful money of Great Britain to the ſaid *William Naile* in hand paid by the ſaid *Joſiah James*, at or before the ſealing and delivery of theſe preſents, the receipt whereof is hereby acknowledged, he the ſaid *William Naile* hath granted, bargained, ſold, aſſigned, transferred, and ſet over, and by theſe preſents doth grant, bargain, ſell, aſſign,

Aſſignment.

(*a*) This will require a ſeven ſhilling ſtamp beſides the ſtamp on the leaſe. An aſſignment is equally valid by indorſement, as if made by a ſeparate deed; and an indorſement is ſo far preferable, as that it prevents the neceſſity of repeating the rentals in the deed.

transfer, and ſet over, unto the ſaid *Joſiah James*, his executors, adminiſtrators, and aſſigns, all that the meſſuage, tenement, and all and ſingular other the premiſes in and by the within written indenture of leaſe demiſed, or mentioned or intended ſo to be, with their and every of their appurtenances; and all the eſtate, right, title, intereſt, term of years to come and unexpired, property, claim and demand whatſoever, of the within named *William Naile*, of, in, to, or out of the ſame premiſes, every or any part thereof, together with the ſaid indenture of leaſe. TO HAVE AND TO HOLD the ſaid piece or parcel of ground, and all and ſingular other the premiſes hereby, or mentioned to be hereby aſſigned, with their and every of their appurtenances, unto the ſaid *Joſiah James*, his executors, adminiſtrators, and aſſigns, from the feaſt-day of St. Michael the Archangel now next enſuing the date hereof, for and during all the reſt, reſidue, and remainder, which ſhall be then to come and unexpired, of the term of twenty-one years, in and by the within written indenture of leaſe granted thereof, (determinable nevertheleſs at the option of the ſaid *Joſiah James*, his executors, adminiſtrators, and aſſigns, at the end of the firſt ſeven or fourteen years of the term of twenty-one years within granted, upon the ſaid *Joſiah James*, his executors, adminiſtrators, or aſſigns, giving ſuch notice to the ſaid *William Naile*, his executors, adminiſtrators, or aſſigns, as the ſaid *William Naile* is required to give in and by the within written indenture), ſubject nevertheleſs to the payment of the rent and performance of the covenants in the ſame indenture of leaſe reſerved and contained on the tenant or leſſee's part, from thenceforth to be paid, done, and performed; and the ſaid *William Naile*, doth hereby for himſelf, his heirs, executors, and adminiſtrators, covenant, promiſe, and agree, to and with the ſaid *Joſiah James*, his executors, adminiſtrators, and aſſigns, in manner following; (that is to ſay) that he the ſaid *Joſiah James*, his executors, adminiſtrators, or aſſigns, paying the rent, and obſerving and performing the covenants and agreements reſerved and contained in and by the ſaid within written indenture of leaſe, on the tenant or leſſee's part to be paid and performed, from and after the ſaid feaſt of St. Michael the Archangel now laſt paſt, ſhall and may from time to time, and at all times thereafter, for and during all the reſidue and remainder which ſhall be then to come and unexpired of the ſaid term of twenty-one years (determinable as aforeſaid), by the within written indenture of leaſe granted, lawfully, peaceably, and quietly have, hold, occupy, poſſeſs, and enjoy the ſaid piece or parcel of meſſuage and premiſes hereby aſſigned, or intended ſo to be, with their and every of their appurtenances, and receive and take the rents, iſſues, and profits thereof, and of every part thereof, to and for his and their own uſe and bene-

Covenant for quiet enjoyment.

ſit, without any lawful let, vert, trouble, denial, eviction, or interruption of or by the ſaid *William Naile*, his executors, adminiſtrators, or aſſigns, or any other perſon or perſons whomſoever, lawfully claiming or to claim, by, from, or under him, them, or any of them, or by or through his or their acts, means, neglect, default, or procurement; AND that free and clear, freely and clearly acquitted and diſcharged, or otherwiſe, by the ſaid *William Naile*, his executors, or adminſtrators, well and ſufficiently kept harmleſs, and indemnified of, from, and againſt all and all manner of former and other deeds, gifts, grants, bargains, ſales, aſſignments, mortgages, ſurrenders, reentries, judgments, executions, extents, ſtatutes, recognizances, and all other incumbrances whatſoever; AND of and from all arrears of rent, taxes, and aſſeſſments, until the ſaid feaſt-day of St. Michael the Archangel next enſuing. AND FURTHER that he the ſaid *William Naile*, his executors or adminiſtrators, and all and every other perſon and perſons having, or lawfully claiming, or to claim any eſtate, right, title or intereſt, of, in, to, or out of the ſaid hereby aſſigned premiſes, or any part thereof, from, by, under, or in truſt, either for the within named *William Naile*, his or any of his executors or adminiſtrators, ſhall and will from time to time, and at all times during the continuance of the ſaid term hereby aſſigned, upon every reaſonable requeſt, and at the coſts and charges in the law of him the ſaid *Joſiah James*, his executors, adminiſtrators, or aſſigns, make, do and execute, or cauſe and procure to be made, done, and executed, all and every ſuch further and other lawful and reaſonable acts, conveyances, and aſſurances in the law, for the further and better aſſuring the ſaid premiſes unto the ſaid *Joſiah James*, his executors, adminiſtrators, and aſſigns, for the then reſidue of the term within demiſed, as by the ſaid *Joſiah James*, his executors, adminiſtrators, or aſſigns, or his or their counſel learned in the law, ſhall be reaſonably deviſed and required.

Free from incumbrances.

Covenant for further aſſurance.

IN WITNESS whereof the ſaid parties have hereunto ſet their hands and ſeals, this eighth day of January, one thouſand ſeven hundred and ninety-ſix.

Witneſs,
Thomas Butts.

William Naile. (Seal.)
Joſiah James. (Seal.)

3. *Assignment of a Policy of Insurance* (*a*.)

TO ALL TO WHOM THESE PRESENTS SHALL COME, *Johnson Pitts*, of *Shadwell*, in the county of *Middlesex*, Gent. (executor of the last will and testament of *Thomas Baile*, late of the same place, Esq. deceased), SENDS GREETING, WHEREAS by a certain deed poll, or policy of insurance, numbered forty thousand and five, bearing date the fifth day of July, in the year of our Lord one thousand seven hundred and ninety-two, and executed by *James Bedwell* and *Richard White*, trustees or directors of a certain office for insuring buildings from fire, going by the name of the *Phœnix Fire Office*, a certain brick dwelling house, and other the premises therein described, situated on the north side of *Carey Street*, in the county of *Middlesex*, in the occupation of *Peter Davis*, are insured from loss by fire, from and after the sixth day of July then next, for and during the term of seven years from the fifth day of July thence next ensuing. NOW KNOW YE, that the said *Johnson Pitts*, for and in consideration of the sum of fifty pounds to him in hand paid by the said *Peter Davis*, the receipt whereof is hereby acknowledged, HATH bargained, sold, assigned, transferred, and set over, AND by these presens DOTH bargain, sell, assign, transfer, and set over, unto the said *Peter Davis*, his executors, administrators, and assigns, the said recited deed poll, or policy of insurance, and all monies that shall or may become due thereon, and all benefit and advantage thereof, and all the right, title, and interest of him the said *Johnson Pitts*, in and to the same respectively. AND the said *Johnsom Pitts* doth also hereby authorize and empower the said *Peter Davis*, his executors, administrators, and assigns, in his or their own name or names, and for his and their own proper use, or in the name of the said *Johnson Pitts*, his executors or administrators, but to and for the use of the said *Peter Davis*, his executors, administrators, and assigns, to receive from the trustees or directors for the time being of the said *Phœnix Fire Office*, all monies that shall or may become due on the said recited deed poll, or policy of insurance, and upon non-payment thereof, or of any part thereof, to sue for, recover, and receive the same, and to give receipts or other discharges for the same; and all and whatever the said *Peter Davis*, his executors, administrators, or assigns, shall lawfully do,

Power of Attorney to receive, &c.

(*a*) This must be written on a seven shilling *Deed* stamp.

or cauſe to be done, in and about the premiſes aforeſaid, the ſaid *Johnſon Pitts* doth by theſe preſents confirm and allow as fully and effectually as if he himſelf were perſonally preſent, and did the ſame. In witneſs whereof the ſaid *Johnſon Pitts* hath hereunto ſet his hand and ſeal, this ſecond day of January, one thouſand ſeven hundred and ninety-ſix.

Witneſs. *Johnſon Pitts.* (Seal.)
Samuel Paine.

4, *An Aſſignment by* Note *in Writing, indorſed on the Back of the Leaſe* (*a*).

5th June, 1796. The within named *James Pounce* hath this day aſſigned and made over unto the underſigned *Thomas Williams*, of *Shadwell, High-Street*, in the county of all and ſingular the hereditaments and premiſes in the within written leaſe deſcribed, and thereby granted, together with the whole of his eſtate and intereſt therein. As witneſs their hands now ſet hereto.

Witneſs, *James Pounce,*
Sykes Webb. *Thomas Williams.*

No. IV. *SURRENDERS.*

1. *The Form of a Surrender of a Leaſe, indorſed on the Back thereof* (*b*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, know ye that the within named *James Finch* hath ſurrendered and yielded up, and hereby doth ſurrender and

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(*a*) This, it is ſaid, needs no ſtamp; but quære? and ſee *ante*, p. 24. and 35 Geo. 3. *c.* 30. *ante*, p. 81.

(*b*) The ſurrender may be by a ſeparate deed, or on the back of the leaſes; in either caſe, if it be under ſeal, it muſt be written on a 7*s.* Deed ſtamp, but if it be only by a mere note or memorandum, no ſtamp is requiſite, *ſupra* n. (*a*)

yield up unto the within named *William Downing*, all and ſingular the within mentioned premiſes, and all the eſtate, term and intereſt of the ſaid *James Finch* therein, together alſo with the within written indenture of leaſe, TO HOLD all and ſingular the ſame premiſes of the ſaid indenture of leaſe, unto the ſaid *William Downing*, his heirs and aſſigns, for ever. In witneſs whereof the ſaid parties have hereunto ſet their hands and ſeals, this ſecond day of March, one thouſand ſeven hundred and ninety-ſix.

Witneſs,
Wm. Munns.

James Finch.
William Downing.

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2. *Another Form by way of Memorandum or Note in Writing* (*a*).

Second of March, one thouſand ſeven hundred and ninety-ſix. The within named *James Finch* hath this day ſurrendered unto the within named *William Downing*, the within leaſe, and all his intereſt therein. As witneſs their hands.

Witneſs,
Tho. Moul.

James Finch.
William Downing.

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3. *The Surrender of a Copyhold Eſtate to the Uſe of a Purchaſer* (*b*).

MEMORANDUM THAT on the twenty-fourth day of Auguſt, in the thirty-fifth year of the reign of our Sovereign Lord *George* the Third, &c. in the year of our Lord one thouſand ſeven hundred and ninety-ſix, Sir *Gilbert Allen*, of *Rippon*, in the county of *York*, Knight, one of the cuſtomary tenants of the ſaid manor, by *John Rich*, Gent. his attorney, (by virtue of a letter of attorney to him made by the ſaid Sir *Gilbert Allen*, for that purpoſe, bearing date the fourth day of Auguſt inſtant), did ſurrender into the hands of the lord of the ſaid manor, by

Manor of *Hampſtead*, in the county of *Middleſex*.

(*a*) See note (*a*) *ſupra*. p. 110.

(*b*) Surrenders and admiſſions of copyhold eſtates (except ſurrenders to the uſe of a will) muſt be engroſſed on a 7*s*. ſtamp if the annual value thereof are 20*s*. and 2*s*. 3*d*. ſtamp if under that value.

the rod, according to the cuſtom of the ſame manor, by the proper hands and acceptance of *Robert Johnſon*, Eſq. lord of the ſaid manor (*a*), ALL that, &c. to the uſe of *Sarah Dowſe*, of, &c. widow, her heirs and aſſigns for ever, according to the cuſtom of the ſaid manor.

Gilbert Allen.

Taken the day and year firſt above written,
by me
Robert Johnſon, lord of the ſaid manor.

The Admittance of the new Tenant.

The manor of *Hampſtead*, in the county of *Middleſex.*

MEMORANDUM THAT after the making the ſurrender hereunto annexed, viz. on this twenty-ninth day of Auguſt, one thouſand ſeven hundred and ninety-ſix, *Sarah Dowſe*, in the ſame ſurrender named, in her proper perſon, came before me *Robert Johnſon*, Eſq. lord of the ſaid manor, at the manſion houſe of the ſaid *Sarah Dowſe*, ſituated near *Hampſtead* aforeſaid, and deſired to be admitted tenant to all and ſingular the cuſtomary meſſuages, lands, tenements, and hereditaments, mentioned and contained in the ſame ſurrender, with their and every of their appurtenances, to whom the lord of the ſaid manor, by his own proper hands, in the preſence of *Jeremiah Clark*, the lord's ſteward for this turn, did then and there grant ſeiſin thereof by the rod, to have and to hold the ſame meſſuages, lands, tenements, and hereditaments, with their and every of their appurtenances, unto the ſaid *Sarah Dowſe*, her heirs and aſſigns for ever, of the lord, at the will of the lord, according to the cuſtom of the ſaid manor, by fealty ſuit of court, and the ſeveral yearly rents and ſervices therefore due, and of right accuſtomed; and the ſaid *Sarah Dowſe* gave to the lord for fine, for ſuch her eſtate, and entry into the ſame premiſes reſpectively, as appears in the margin, the fealty was reſpited. And ſo ſaving the lord his right, the ſaid *Sarah* was admitted tenant to the ſaid premiſes in manner and form aforeſaid.

Fine three pounds ſix ſhillings and eight pence.

Robert Johnſon,
Lord of the ſaid manor.

In the preſence of *Jeremiah Clarke.*

(*a*) It is more uſual for the ſurrender to be taken by the *ſteward*, but it may be done by the lord himſelf.

The Surrender of the ſaid Sarah Dowſe *to the Uſe of her Will.*

MEMORANDUM THAT after the admiſſion of the ſaid *Sarah Dowſe* as aforeſaid, viz. on the ſaid twenty-ninth day of Auguſt, in the year of our Lord one thouſand ſeven hundred and ninety-ſix aforeſaid, the ſaid *Sarah Dowſe* did ſurrender into the hands of the ſaid lord of the ſaid manor, by the rod, according to the cuſtom of the ſaid manor, by the proper hands and acceptance of the ſaid lord of the ſaid manor, all and every the cuſtomary meſſuages, lands, meadows, paſtures, tenements, and hereditaments, to which ſhe was admitted as above mentioned, with their and every of their appurtenances, and all other her cuſtomary and copyhold meſſuages, lands, tenements, and hereditaments, which are parcel of the ſaid manor, or are held of the ſame manor, by copy of court-roll, to ſuch uſes, intents, and purpoſes, as the ſaid *Sarah Dowſe* ſhall in and by her laſt will and teſtament in writing, limit, declare, or appoint.

Sarah Dowſe.

Taken the day and year above written,
by me
Robert Johnſon, lord of the ſaid manor.

No. V. *NOTICES to QUIT, to REPAIR, and to PAY RENT.*

1. *Notice from* Landlord *to* Tenant *to quit a Houſe an Premiſes* (*a*).

SIR,

I Hereby give you notice to quit, on or before the twenty-fifth day of March next, the houſe and premiſes ſituated No. 6, *Gower Street, Bedford Square*, in the county of *Middleſex*,

---

(*a*) Notices to quit require no ſtamp.

which you now hold of me at the rent of Sixty pounds per annum. Dated this fourth day of January, one thouſand ſeven hundred and ninety-ſix.

To *Thomas Wilkes*, Eſq. Yours, &c.
No. 6, *Gower Street, Bedford Square.* *John Stiles.*
Landlord of the ſaid houſe and premiſes.

---

2. *Notice from* Landlord *to* Tenant, *either to quit a Farm and Premiſes, or pay double Rent.*

SIR,

I hereby give you notice to quit and deliver up, on or before the fifth day of January now next, the houſe, farm, lands, and tenements, which you now hold of me, ſituate No. 10, *Paddington Green*, in the county of *Middleſex*, in default whereof I ſhall require for the ſame the net yearly rent or ſum of eighty-pounds, (being double the preſent yearly rent thereof), for ſuch time as you ſhall thereafter continue poſſeſſion. Dated this fourth day of October, one thouſand ſeven hundred and ninety-ſix.

To Mr. *James Pie.* *Joſeph Wilſon.*
Landlord of the ſaid premiſes.

---

3. *Notice from* Tenant *to his* Landlord *to quit Houſe and Premiſes.*

SIR,

I hereby give you warning that I ſhall quit the houſe and premiſes I now hold of you, ſituated No. 25, *Gerard Street, Soho Square*, on Michaelmas Day next. Dated this firſt day of July, one thouſand ſeven hundred and ninety-ſix.

To Mr. *Peyton*, Yours, &c.
No. 10, *Lyon's Inn.* *Stephen Phillips.*

---

4. *Notice from* Landlord *to* Tenant, *to quit Apartments.*

SIR,

I hereby give you notice to quit and deliver up, on or before the twenty-fifth day of December next, the appartments,

and other tenements, you now hold of me in this houſe. Witneſs my hand this twentieth day of September, one thouſand ſeven hundred and ninety-ſix.

Miners Jones.

---

5. *Notice from* Tenant *to* Landlord, *to quit Apartments.*

SIR,

Take notice, that on the twenty-fifth day of December next I ſhall quit and deliver up the apartments, and other tenements, I now hold of you in this houſe. Witneſs my hand this twentieth day of September, one thouſand ſeven hundred and ninety-ſix.

Stephen Phillips.

---

6. *Notice from* Landlord *to* Tenant *to repair Premiſes* (*a*).

SIR,

I do hereby give you notice to put in good and tenantable repair, all and ſingular the houſe and premiſes which you now hold of me, ſituated in &c. particularly the cieling in the front room two pair of ſtairs in the ſaid houſe, &c. &c. (*as the caſe may be*). As witneſs my hand this day of 1796.

A. Duffield.

---

7. *Notice from* Landlord *to* Tenant *to pay Rent* (*b*).

SIR,

Unleſs you pay, or cauſe to be paid, unto me on or before the 6th day of July next, the ſum of £. being half a year's rent due at Midſummer next, for the houſe you now rent of me, ſituated, &c. I ſhall inſiſt upon ſuch forfeiture thereof as the law entitles me to. As witneſs, &c.

A. Duffield.

(*a*) No ſtamp neceſſary.
(*b*) No ſtamp requiſite.

No. VI. *RECEIPTS FOR RENT* (*a*).

TWENTY-NINTH day of March, one thouſand ſeven hundred and ninety-ſix, received of Mr. *James Tyſon*, the ſum of fifteen pounds ten ſhillings, being half a year's rent due from him to me at Lady Day laſt.

James Phillips.

£.	s.	d.	
15	10	0	....Rent.
0	10	0	....Land-tax.
£.15	0	0	....Net ſum.

When received for the Uſe of another it may be thus:

Twenty-ninth day of March, one thouſand ſeven hundred and nintety-ſix, received of Mr. *James Tyſon*, the ſum of fifteen pounds ten ſhillings, being one half year's rent due to *James Phillips*, of *Bedford Square*, Eſq. for the houſe now occupied by the ſaid *James Tyſon*, No. 15, *Great Ruſſel Street*, *Bloomſbury*.

William Gill,
No. 6, *Clifford's Inn.*

£.	s.	d.	
15	10	0	....Rent.
0	10	0	....Land-tax.
£.15	0	0	....Net ſum.

(*a*) The ſtamps required on receipts, whether for rent or other money, are as follows:

For 2l. and under 20l. 2d.
20l. and under 50l. 4d.
50l. and under, 100l. 6d.
100l. and under 500l. 1s.
500l. and upwards, 2s.

And for every receipt in *full*, however ſmall the ſum, 2s.

No. VII. *PRECEDENTS IN DISTRESS.*

1. *The Form of an Authority given by a Landlord to empower another to diſtrain for him* (*a*).

Mr. *William Jones*,

I do hereby authorize you to diſtrain the goods and chattels of *Thomas Peters*, on the premiſes now in his poſſeſſion, ſituate at *Iſlington*, in the county of *Middleſex*, for twenty pounds, being *half a year's* rent due to me for the ſame at *Lady Day* laſt, and for your ſo doing this ſhall be a ſufficient warrant of authority. Dated this eighth day of April, one thouſand ſeven hundred and ninety-ſix.

James Fraſer.

2. *The Form of an Inventory and Notice to be ſerved on a Tenant when Diſtreſs taken of his Goods, &c. for Rent in arrear.*

An inventory of the ſeveral goods and chattels diſtrained by me *William Jones*, the tenth day of April, one thouſand ſeven hundred and ninety-ſix, in the dwelling houſe (*or otherwiſe as the caſe may be*) of *Thomas Peters*, ſituated at *Iſlington*, in the county of *Middleſex*, by the authority and in the behalf of *James Fraſer*, the landlord of the ſaid premiſes, for twenty pounds, being half a year's rent due to him the ſaid *James Fraſer*, at Lady Day laſt.

In the Dwelling Houſe.

4 *Bedſteads and bedding.*
12 *Mahogany chairs.*
2 *Dining tables.*

In the Yard.

5 *Pigs.*
6 *Hens, &c. &c.*

(*a*) No ſtamp is required on any of the following proceedings in diſtreſs, except in the replevin bond.

At the Bottom of this Inventory muſt be written the following Notice to the Tenant,

Thomas Peters,

Take notice that I have this day, by the authority and on the behalf of your landlord, *James Fraſer*, Eſq. diſtrained on the premiſes above-mentioned, the ſeveral goods and chattels mentioned in the above inventory, for the ſum therein expreſſed, which goods and chattels are removed to No. 10, *High Street*, and there ſafely impounded; and unleſs you pay the ſaid ſum, with the charge of diſtraining for the ſame, within the ſpace of five days from the date hereof, the ſaid goods and chattels will be appraiſed and ſold, according to the ſtatute in that behalf made and provided.

William Jones.

The Perſon who ſerves the above on the Tenant, ſhould ſign a Memorandum on a Copy thereof, purporting that he has done ſo, and the Day when.

---

3. *The Form of a Tenant's Conſent to the Landlord's continuing in Poſſeſſion upon the Premiſes, of Goods diſtrained, after the ſeventh Day.*

I *Thomas Peters* do hereby conſent that *James Fraſer*, my landlord, who on the tenth day of April laſt diſtrained my goods and chattels for rent due to him, ſhall continue poſſeſſion thereof on the premiſes for the ſpace of ſeven days from the date hereof, the ſaid *James Fraſer* undertaking to delay the ſale of the ſaid goods and chattels for that time, in order to enable me to diſcharge the ſaid rent. Witneſs my hand this ſeventeenth day of April, one thouſand ſeven hundred and ninety-ſix.

Thomas Peters.

---

4. *The Form of a Memorandum of an Oath being adminiſtered to Appraiſers of Diſtreſs, to be indorſed on an Inventory of the Goods.*

Be it remembered that on this 6th day of April, one thouſand ſeven hundred and ninety-ſix, *Joſeph Pinks* and *Stephen*

Lyons, two ſworn appraiſers, were ſworn upon the Holy Evangeliſts by me *Timothy Thomas*, conſtable, well and truly to appraiſe the goods and chattels mentioned in this inventory, according to the beſt of their judgment.

Witneſs, *Timothy Thomas.*

John Lann,
Michael Moſes.

---

5. *The Form of a Memorandum of an Appraiſement of Goods diſtrained, to be indorſed on the Inventory thereof.*

We the above-named *Joſeph Pinks* and *Stephen Lyons*, being ſworn on the Holy Evangeliſts by the above named *Timothy Thomas*, well and truly to appraiſe the goods and chattels mentioned in this inventory, according to the beſt of our judgment, and having viewed the ſaid goods and chattels, do appraiſe and value the ſame at the ſum of thirty pounds, as witneſs our hands this day of April, one thouſand ſeven hundred and ninety-ſix.

Joſeph Pinks.
Stephen Lyons.

Witneſs,
James Wills.

---

6. *The form of a Replevin Bond* (*a*).

KNOW ALL MEN by theſe preſents, that we *George Thomas*, of &c. and *Edward Piles*, of the ſame place, gent. are held and firmly bound unto *William George*, ſheriff of the ſaid county, in the ſum of one hundred pounds, (*double the value of the goods diſtrained*), of lawful money of *Great Britain*, to be paid to him the ſaid *William George*, or his certain attorney, executors, adminiſtrators, or aſſigns, for which payment to be well and truly made we bind ourſelves, and each of us, our and each of our heirs, executors, and adminiſtrators, jointly and ſeverally by theſe preſents, dated this ſecond day of June one thouſand ſeven hundred and ninety-ſix.

Now the condition of this obligation is ſuch, that if the above bounden *George Thomas* ſhall and do appear at the next

---

(*a*) To be written on a 7*s.* Deed ſtamp.

county court to be holden for the county of *Eſſex*, at the town of on the twelfth day of October next hereafter, and there proſecute with effect his ſuit which he has commenced againſt *Francis Topworth*, for the taking and unjuſtly detaining three carts, one waggon, ſix horſes, and two cows, the goods and chattels of him the ſaid *George*, and ſhall and do make a return of the ſaid goods and chattels, if a return of the ſame ſhall be adjudged, then this obligation ſhall be void and of none effect, but otherwiſe ſhall remain and be in full force and virtue. Sealed with our ſeals the day and year firſt above written.

George Thomas. (Seal.)
Edward Piles. (Seal.)

Witneſs,
James Till.

(2)

THE

LAWS

RESPECTING

WILLS, TESTAMENTS,

AND

CODICILS,

AND

EXECUTORS, ADMINISTRATORS, AND GUARDIANS,

Laid down in a *plain* and *eaſy* Manner; in which all *technical Terms of Law* are familiarly explained;

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TO THE

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THE following pages are intended to compoſe a ſecond diviſion of the Work we have announced to the public, under the title of LAW SELECTIONS. Till it has received the judgment of others, it would ill become us to offer an opinion of its merit or utility; the ſubject, we are ſure, will be thought of ſufficient importance to have claimed our notice, and we hope its execution will not be found leſs worthy of the public approbation than that which has already met with ſo flattering a reception.—It principally differs from other treatiſes on the ſame ſubject, 1. in its arrangement; and 2. in the particular attention which had been paid to the ſtatute of wills, and thoſe parts of the ſtatute of frauds and perjuries which affect the ſubject of deviſes; ſome of the obſervations on thoſe ſtatutes, the reader will perceive to be new, and ſome he will probably meet with in the writings of others.—The author thinks too well of the profeſſion, to fear the novelty of his ſuggeſtions ſhould depreciate their value; and he hopes he has too much integrity to propoſe difficulties, merely to perplex the noviciate, or to haraſs the learned.

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TO

THIS EDITION.

TO the few obſervations by which the *former* impreſſions of the following ſheets were prefaced, the author has only to add that in the PRESENT EDITION conſiderable improvement has been attempted; and he hopes not in vain;—the whole has received a careful reviſal, and much new matter been introduced in every part of the work. A chapter has likewiſe been compoſed on the nature and authority of GUARDIANS, a new ſet of PRECEDENTS added, and a full abſtract ſubjoined of the late LEGACY ACT. With theſe additions, the Author flatters himſelf that the favour ſhewn by the public to the preceding Editions will not be withdrawn from that with which they are now preſented.

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Show.	Showers's Reports.
Show. Par. Ca.	Showers's Parliament Cases.
Stra.	Strange's Reports.
Sty.	Style's Reports.
Term Rep.	Term Reports in the King's Bench, by Durnford and East.
Vaugh.	Vaughan's Reports.
Vern.	Vernon's Reports.
Vez.	Vezey's Reports.
F. Vez.	Francis Vezey's Reports.
Vid.	See.
Vin. Abr.	Viner's Abridgment.
Will. Just.	Williams's Justice of the Peace.
Will.	Wilson's Reports.

INTRODUCTION.

ORIGINALLY when, by the laws of nature, property was held to be vested in individuals by right of occupancy, it was found necessary, to prevent strife and litigation, that the possessor should have the privilege of transferring his right to others; but such a privilege, as is observed by Sir William Blackstone, in his admirable Commentaries on the laws of this country, would have been very short and imperfect, if it had been confined to the life only of the owner; for then upon his death all the mischiefs which the rule was introduced to prevent, would again occur in their full force. To prevent this evil, the laws of England, as well as of almost every other civilized country, have, from the earliest period we are acquainted with, allowed to every one, under certain restrictions, the liberty of continuing, as it were, his property after his death, to such persons as by the ties of affection or friendship he may be desirous should enjoy it; and if he omit making any such disposition of his effects, the law, for the same purpose of preventing strife and confusion, has vested them in certain *specified* individuals, exclusive of all others. The nature and effect of the instruments by which property is so continued to the nominee of the deceased possessor, and the designation made by the law where no such nominee is declared, together with the office and duties of those who are appointed to carry into execution such instruments or such designation, are the subjects we profess to treat of in the following pages; subjects with which it is highly fit that every one should be in some degree acquainted, as every one will probably at one period or other be implicated in their effects. Origin of wills.

In treating of these subjects, the first object of our consideration will be to investigate the nature of those instruments by which property is allowed to be transferrable to the nominee of the deceased owner; these are

Wills, *Teſtaments*, and *Codicils*; and in purſuing this inquiry, we ſhall naturally be led to conſider,

Diviſion of the work.

I. Who is by law allowed to make a will.

II. What ſpecies of property may be transferred or diſpoſed of by will.

III. Who are capable of taking by will.

IV. The requiſites to conſtitute a valid will or teſtament.

V. Of a teſtament, as diſtinguiſhed from a will or deviſe.

VI. Of the nature and effect of a codicil to a will.

VII. The means by which a will or teſtament may be annulled.

VIII. The means by which its efficacy may be reſtored.

We ſhall then proceed to that branch of our ſubject which relates to *Executors*, *Adminiſtrators*, and *Guardians*, and therein we ſhall endeavour to inveſtigate and aſcertain,

I. The office and duty of an executor, as diſtinguiſhed from an adminiſtrator.

II. The office and duty of an adminiſtrator, as diſtinguiſhed from an executor.

III. The duties and functions applicable to them both.

IV. The appointment and authority of a guardian.

And conclude with appropriate forms of wills, teſtaments, and codicils, adapted to the diſpoſal of every ſpecies of property that thoſe inſtruments are capable of tranſferring.

CHAP. I.

OF WILLS.

I. *As to Perſons allowed by Law to make a Will or Teſtament.*

IT may be ſaid in general, that all perſons are permitted, by the laws of England, to diſpoſe of their property by will, unleſs under ſome *ſpecial* prohibition; for by the 32 of Hen. 8. c. 1. (as operated upon by 29 Car. 2. c. 24.) *all perſons* (except bodies politic, whether aggregate or ſole) having a ſole eſtate or intereſt in fee-ſimple, or ſeized in fee-ſimple, in coparcenary or in common, of any manors, lands, tenements, rents, or other hereditaments, in poſſeſſion, reverſion, or remainder, or any of them, or any rent, common, or other profits or commodities out of or to be perceived (*i. e.* received) of the ſame, or out of any parcel thereof, ſhall have full and free liberty to give and diſpoſe, will and deviſe the ſame, or any of them, by his laſt will and teſtament in writing, or otherwiſe at his free will and pleaſure. Our ſhorteſt way, therefore, will be to inquire, not who may, but who may not make a will or teſtament. *Who entitled to make a will;*

And firſt, by 34 Hen. 8. c. 5. ſec. 14. explanatory of the laſt-mentioned ſtatute, and paſſed in order to prevent doubts which had ariſen, as to whether it extended to perſons diſabled by the common law from alienating their lands by other kinds of conveyances, it is enacted, that "a will or teſtament made of any manors, lands, tenements, or hereditaments, by any woman covert, or perſon within the age of 21 years, or an idiot, or by any perſon of non-ſane memory, ſhall not be taken to be good or effectual in law." Theſe we ſhall conſider in the order they are here mentioned, and then proceed to ſuch other diſqualifications as are acknowledged by the common law; namely, the deviſor's being under ſuch reſtraint, dureſs, or menace of impriſonment, as to deprive him of his natural liberty and freedom of will; his having been guilty of certain criminal offences; and laſtly, to thoſe *who cannot make a will.*

WILLS. diſqualifications which ariſe from the nature of his tenure. Firſt, however, premiſing, that the foregoing act is ſaid not to extend to the particular cuſtoms of particular diſtricts. *Perk.* 221.

Infants. The diſqualification ariſing from infancy, or being under the age of 21 years, is founded on the ſuppoſed want of diſcretion in perſons at ſo early a period of life, to diſpoſe of their property in a rational manner; on which account the law, in compaſſion to the inferiority of their judgment, and to prevent their being ſeduced by deſigning perſons to make a diſpoſition of their eſtates, contrary to their real intereſts and inclinations, has utterly diſabled them from alienating their inheritance till they are arrived at an age in which their underſtanding may be preſumed to be more ripe and mature. But if an infant renew the will by *republiſhing* it after he comes of age, it will be equally valid as it would have been if originally made at the time of ſuch republication. 1 *Sid.* 162. but in this caſe it is held that it muſt be an actual and deliberate republication, and not a *mere declaration* that the will ſhall ſtand. *Comb.* 84.

In accounting the age of an infant, it is obſervable, that the day of his birth is to be *excluded*, ſo that he is deemed of full age on the day preceding that of his birth. 1 *Salk.* 44.

The ſtatute of 34 Hen. 8. the reader obſerves, mentions only *lands* and other *hereditaments*; eſtates of an inferior deſcription, therefore, as goods, money, and other perſonal property, (being deemed of inſufficient importance to claim the notice of the legiſlature) were left to ſtand as at common law, which in reſpect of infants, are ſtill deviſeable at the age of 14 years if *males*, and 12 if *females*. No objection therefore can be made to the wills of infants above theſe ages, *merely* on account of their youth; if, however, it appear that they are unfortunately not of ſufficient diſcretion to act with the rationality common to their years, their teſtaments will be invalid, of whatever age they may be. See *Hob.* 225.

Some indeed have held, that an infant of *any age* may, at the common law, make a will. *See Perkins*, § 503; and others, that they are capable under the age of 18. *Co. Lit.* 89. b. n. (*b*). But as the eccleſiaſtical court is the judge of every teſtator's capacity, this caſe muſt be governed by the rule of the eccleſiaſtical law, which is that already mentioned.

The diſqualification of idiocy, is founded on the natural incapacity of ſuch a one to exerciſe that degree of underſtanding which conſtitutes volition. An idiot or natural fool is one who has had no underſtanding from his nativity; and is therefore deemed in law (grounded on experience) never likely to attain any; and the ſame diſability applies to others, who though not abſolutely idiots, have ſuch a weakneſs of mind as to be rendered incapable of diſpoſing of their property with underſtanding and reaſon, for per Lord *Coke*, "it is not ſufficient that the teſtator be of ſuch underſtanding or memory when he makes his will, as to be able to anſwer common familiar queſtions, but he ſhould have a *diſpoſing* memory." 6 *Co.* 23. Idiots.

To this head may alſo be referred perſons grown childiſh from age or other cauſe, who by the common law are, on a like principle of involition, incapable of making a will ſo long as ſuch diſability continues. Perſons childiſh, &c.

Alſo perſons born deaf, dumb, and blind, who never having had the neceſſary inlets of underſtanding, muſt unavoidably be too deficient to have any rational will of their own, are likewiſe, for ſimilar reaſons, incapable of diſpoſing of their property by will. *Co. Litt.* 42. 2 *Black. Com.* 496. Perſons deaf, &c. from infancy.

The third diſqualification mentioned by the ſtatute, is that of inſanity, which is alſo a common law diſability, and grounded on ſimilar reaſons of expediency, and of natural incapacity to exerciſe an act of willing. 1 *Cha. Ca.* 13. Maniacs.

The 4th and laſt diſqualification by ſtatute is coverture; the principle of this diſability ariſes on a ſuppoſed want of free agency in a married woman; for as ſhe is placed by law under the coutroul, and ſubject to the will, of her huſband, all acts done by her during coverture, are preſumed to be ſo far under the influence of her huſband, as to be rather his acts than hers; ſhe is conſequently deemed wanting in that freedom of will which is neceſſary to conſtitute an independent act of the mind. *Swinb.* 78. *Dyer* 354. *Co. Lit.* 112, b. Married women.

But if the huſband be baniſhed for life by act of parliament, the wife may then make a will, and act in all things as if her huſband were dead. 2 *Vern.* 104.

The ſame diſability of the wife prevailed alſo at the common law, and therefore a married woman is equally incapable of diſpoſing of goods or chattels by will, as of lands, not only on account of the reaſon before given, but

WILLS. becauſe on her marriage the whole of her perſonal property veſts in her huſband. 4 *Co.* 51.—Yet by the licence of her huſband ſhe may make a will, of ſuch goods and other perſonal effects as he may kindly conſider as hers; and it is therefore common for the huſband, previous to his marriage, to covenant with the parents or friends of the lady, to allow her that licence. And in reſpect to the real eſtates of the wife, ſhe may by ſuch previous agreement of the huſband, and with the aſſiſtance of a fine, diſpoſe of them by will, notwithſtanding her coverture. Such *licence*, however, Sir W. Blackſtone obſerves, is more properly an *aſſent*; for unleſs it be given to the particular will in queſtion it will not be a complete teſtament, even though her huſband have previouſly given her permiſſion to make a will. 2 *Com.* 497. *Stra.* 891. Though it will be ſufficient to bar the huſband's general right of adminiſtering to his wife's effects, and adminiſtration ſhall be granted to her appointee, with ſuch teſtamentary paper annexed. *Ibid.* But ſtrictly ſpeaking, an inſtrument executed by a feme covert, in the nature of a will, does not take effect abſolutely as a *will*, conſidered as an act of the mind at the time of execution, but is to be looked upon rather as an *appointment* or dependent act, referring back to the deed or covenant by which it is created, and from which it derives all its operative faculty; yet in all other reſpects, as the external form, and its action upon the eſtate deviſed, it partakes of the nature of a will, and therefore the ſame diſqualifications which create an inability to deviſe in other caſes will extend alſo to this. See *Pow. Dev.* 168. 1 *Bur.* 431.

But it has been ſaid that if a wife be entitled to a ſeparate maintenance or pin-money, ſhe may bequeath her ſavings out of ſuch allowance, without any licence or conſent of her huſband. *Prec. Chan.* 44.

And ſo too where perſonal property of any kind has been given to a married woman for her ſole and ſeparate uſe, ſhe may bequeath it, or any ſavings thereout, without the aſſent of her huſband. 3 *Brow. Chan. Ca.* 8.

It ſeems ſcarcely neceſſary to ſay, that theſe legal reſtrictions of a married woman do not extend to ſuch goods as are in their poſſeſſion in right of another; (as the being executrix or adminſtratrix) which can never be the property, or in any reſpect liable to the controul, of the huſband.

We now proceed to mention ſuch other diſqualifications

at the common law, as are not excepted out of the ſtat. 34 *Hen.* 8. WILLS.

The firſt of which is the teſtator's being under reſtraint, dureſs, or menace, whether of death, impriſonment, or other material injury, which is *prima facie* a foundation to preſume he wanted that freedom of mind, which the law has wiſely made neceſſary, in order to the validity of a will; and thus where it appeared that a man in his laſt ſickneſs was obliged to make his will, to procure quiet from the over-importunity of his wife; it was held to have been made under reſtraint, and declared void. *Sty.* 427. 1 *Ch. Rep.* 66. Dureſs, &c.

It is to be obſerved, however, that the wills of perſons made in theſe ſituations, are not neceſſarily and invariably void, but are valid or invalid accordingly as, under all the circumſtances which attended them, the teſtator may reaſonably be preſumed to have had a free and independent will or not.

And it is to be obſerved, that theſe diſabilities of *infancy*, *inſanity*, *idiocy*, *coverture*, or *dureſs* if exiſting at the time of making the will, render it ſo entirely void, that it cannot be validated by any confirmation of the teſtator, after they are removed. 11 *Mod.* 157.

Another deſcription of perſons incapable of making a will are thoſe whoſe property is become forfeited by ſome criminal act; as,

Traitors, whoſe lands and tenements, from the time of the commiſſion of the offence, and goods and chattels from the time of conviction, are forfeited to the king, and conſequently no longer in the power of the criminal. 4 *Burn Ec. Law*, 54. *Swinb.* 88. Traitors.

Perſons guilty of the crime of *petit treaſon*, or of *felony*, are for a ſimilar reaſon of forfeitnre, incapable of diſpoſing of either their lands or goods. *Plow.* 258. Felons.

But there appears to be an exception in favour of lands held after the manner of gavelkind, which are not forfeited for felony. *Rob. Gav.* 75.

And the ſame diſability holds good in regard to a *felo de ſe*, or a perſon who wilfully deſtroys himſelf, as far as reſpects his *goods and chattels*, they being, by the act of ſuicide, forfeited to the king; but he may nevertheleſs deviſe his *lands*, and other *real eſtates*, which are not ſubject to forfeiture, a ſuicide not being attainted as a felon. 4 *Black. Com.* 386. *Plow.* 261. Felo de ſe.

An *outlawed* perſon is out of the protection of the law, Outlaw.

Wills. and his goods and chattels forfeited to the king; he is consequently disabled from exercising any act of disposition over his *personal property*, so long as the outlawry subsists; but of his *lands* he may dispose by will, as they are not forfeited by the outlawry. 2 *Black. Com.* 499.

As to persons guilty of offences less than felony, as usurers, libellers, &c. &c. though by the civil law their wills are held to be void, they are good by the common law, which adheres to the general rule we have before taken notice of, that the last will of every man shall be observed, except in the particular cases we have already or are proceeding to enumerate. *See Swin.* 90. *Perk.* § 496; *and stat.* 32 *and* 34 *Hen.* 8.

Aliens. Aliens being by the laws of England incapable of possessing any *lands* or real estates, cannot have any to dispose of; but they may acquire a property in personal estate, as *goods*, &c. and may bequeath them by will. 1 *Black. Com.* 372.

Besides these disqualifications, there subsists two others, which relate not to the person of the testator, but to his Jointenants. estate. These are the holding his estate in jointenancy; and not being possessed of his estate at the *time of making* his will, but having acquired it at some subsequent period; of both which estates he is incapable of devising, as will be more particularly seen hereafter.

Things devise-able. II. *Concerning those Species of Property which may, and those which may not, be disposed of by Will.*

Personal pro. perty. Personal property, as goods and chattels of every description, may be bequeathed by will; and not those only which a man has at the time of making his will, but those which he may afterwards acquire, will equally pass. See *Post.*

Things in action. Therefore things in action, that is to say, debts and other monies, &c. due to a man, but yet not in his possession, being personal property, are deviseable by will, though by the common law they cannot be granted by deed in the party's life-time. *Perk.* 511.

Deeds. And so likewise are bonds and obligations, counterparts of leases, and the like. *Perk.* 527.

Emblements. So emblements, *viz.* corn growing upon the land of tenant for life, &c. at the time of his decease, may be bequeathed by will.

Dower-crops. And by 20 Hen. 3. c. 2. The dower-crops of widows

are in like manner bequeathable; and in general whatever will go to the executor of the deceaſed in right of his executorſhip, will paſs by the teſtator's will. *Perk.* § 527.

Real property.

But as real property, unleſs by the local cuſtoms of particular places, is deviſeable only by virtue of the ſtatutes we have before noticed, (32 Hen. 8. c. 1. and 34 and 35 ibid. c. 5.) it will be neceſſary, in order to diſcover how far the power of deviſing real eſtates extends, to take a view of thoſe ſtatutes. The ſtat. 32 Hen. 8. enacts that all perſons having, or which thereafter ſhall have, any manors, lands, tenements, or hereditaments, of any eſtate of inheritance holden by or in the nature of ſocage tenure, (by which all lands except copyholds are now holden) ſhall have full and free liberty, power, and authority, to give, diſpoſe, will and deviſe the ſame, as well by his laſt *will and teſtament* in writing, as otherwiſe, *all his ſaid manors, lands, tenements*, and *hereditaments*, or any of them, at his free will and pleaſure.

Obſervations on ſtat. 32. Hen. 8.

And by 34 and 35 Hen. 8. c. 5. § 8. it is enacted, that the words "eſtate of inheritance," mentioned in the act of 32 Hen. 8. ſhall be taken to mean *eſtates in fee-ſimple only*. After which it proceeds, that all perſons having a ſole eſtate or intereſt in fee-ſimple, or ſeized in fee-ſimple, in coparcenary, or in common, of any manors, lands, tenements, rents, or other hereditaments, in poſſeſſion, reverſion, or remainder, or of rents or ſervices incident to any reverſion or remainder, ſhall have full liberty, power, and authority, to give, diſpoſe, will, or deviſe to any perſon or perſons whomſoever, by his *laſt will and teſtament* in writing, all his ſaid manors, lands, tenements, rents, and hereditaments, or any of them, or any rent, commons, or other profits or commodities, out of the ſame, or any part thereof, at his own free will and pleaſure.

Stat. 34 and 35 Hen. 8.

In conſidering theſe ſtatutes, we ſhall ſhortly enquire, 1. what things are, and 2, what things are not, within their purview.

An *advowſon* has been held to be included under the word "tenement," mentioned in the above ſtatutes, and is therefore deviſeable. *Hob.* 303.—As it is alſo under the word, "hereditament." *Cro. Eliz.* 359. 1 *And.* 21.

Advowſons.

The next preſentation to an advowſon will likewiſe paſs by the ſame word. 2 *Black. Rep.* 1240.

And on this caſe it was determined, that a deviſe of the

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next turn or preſentation, carried to the deviſee not merely a right of getting himſelf preſented, but the next turn of preſenting.

Donative.

A *Donative* has alſo been held to be deviſeable under theſe ſtatutes. 2 *Vern.* 748.

Rents.

Rents are deviſeable, as well by 34 *Hen.* 8. as alſo by cuſtom; and whenever lands are deviſeable by cuſtom, the rents iſſuing out of them are ſo too.

And theſe being *tenements*, require the ſolemnity of writing in the preſence of 3 witneſſes to atteſt their deviſe. 2 *F. Vez.* 232.

Tythes.

Tythes alſo, of which a man is ſeized in fee may be deviſed, as coming under the denomination of hereditaments. *Sty.* 261.

Manors are deviſeable by general cuſtom, as well as by the ſtatutes. 3 *Co.* 32. b.

And franchiſes, if capable of valuation, and not reſtrained to the perſon of the grantee and his heirs, are deviſeable; and though they be not valuable, they may paſs as appurtenant to other things which are ſo. 3 *Co.* 32, 33. And ſee *Poſt.*

Annuity.

An annuity in fee is alſo deviſeable under the ſaid ſtatutes. *Co. Litt.* 144.

Obſervations on ſtat. 32. Hen. 8.

Having particularized the things which have been held by the courts to come within the meaning of the words, "lands, tenements, and hereditaments," in the ſtatute of 32 *Hen.* 8. we ſhall now commence our conſideration of ſtat. 34. of the ſame reign; which, in explaining the firſt of theſe ſtatutes, enacts that the words "eſtate of inheritance," uſed therein, ſhall be conſtrued to mean eſtates *in fee-ſimple only.*—But of eſtates in fee-ſimple, there are ſeveral kinds.

Eſtates in fee-ſimple abſolute.

As a fee-ſimple *abſolute*, where lands are given to a man and his heirs, abſolutely without any condition or reſtriction. *Plow.* 537.

Determinable.

A fee-ſimple *determinable*, which is where an eſtate is given to a man and his heirs, not abſolutely and for ever, but during ſuch period of time only as ſome other perſon named ſhall have heirs of his body, or for ſome other uncertain time. *Ibid.*

Qualified.

A *baſe* or qualified fee, where ſome qualification is annexed to the eſtate, and which muſt determine whenever that qualification ends, as where bond is given to a John Talbot and his heirs, *lord of the manor of Dale*, here

John Talbot has a baſe or qualified eſtate, which determines on his or his heirs ceaſing to be lords of that manor. *Co. Litt.* 27, *Plow.* 557.

A fee-ſimple conditional, which is where perſonal hereditaments are given to a man and the heirs of his body, in which caſe they become abſolute and unconditional on the donee's having ſuch heir: this eſtate differs from a *determinable fee*, inaſmuch as that ſpecies of fee never becomes an abſolute fee-ſimple, but always remains in its original determinable ſtate. *Pow. Dev.* 252. Conditional.

All which eſtates are clearly deviſeable under the aforeſaid ſtatutes of *Hen.* 8. the word *fee-ſimple* being there uſed in its largeſt ſenſe, and in oppoſition to eſtates tail and eſtates *pur autre vie*, i. e. for another's life. 3 *Bulſ.* 184.

Eſtates *pur autre vie* are alſo deviſeable, not indeed by theſe ſtatutes, but by the ſubſequent act of 29 Car. 2. c. 3. But eſtates in jointenancy, though they may be held in fee, are yet not deviſeable, for by the death of one jointenant, his part immediately accrues to the ſurvivor. *Co. Litt.* 185. and though the eſtate be ſevered previous to the death of the teſtator, yet the will being void at its execution, the eſtate will ſurvive to the other. 2 *Bur.* 1488. *Amb.* 617. Eſtates *pur autre vie*.

Eſtates in fee-ſimple are alſo ſaid to be either in *poſſeſſion* or in *expectancy*; they are in poſſeſſion where no intermediate eſtate ſubſiſts between the right to poſſeſs and the actual enjoyment itſelf; they are ſaid to be in expectancy, when the actual intereſt and poſſeſſion is deferred till the accompliſhment of ſome other act. The firſt of theſe eſtates is deviſeable; but the ſecond, we ſhall hereafter ſee, cannot be deviſed. Fee-ſimple in poſſeſſion deviſeable; in expectancy not.

Reverſions, being a preſent intereſt, though a degree removed from preſent enjoyment, come under the firſt of theſe denominations, viz. fee-ſimple in poſſeſſion, and are therefore deviſeable. Reverſions.

As are remainders, which ſtand in a ſimilar predicament. Remainders.

Contingent intereſts, that is to ſay, eſtates or intereſts limited to take place upon a precedent condition, though reſting in mere poſſibility of taking effect, are alſo, when coupled with an intereſt, deviſeable. 3 *Bulſ.* 184. 1 *Blac. Rep.* 222. 1 *H. Blac. Rep.* 33. 2 *Bur.* 1131. 3 *T. R.* 88, 93. 1 *F. Vez.* 254. As is alſo any *equitable* intereſt. Contingent intereſts.

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After having particularly enumerated all the various eſtates and intereſts which *are* deviſeable, it may be thought unneceſſary to proceed to thoſe which are *not* ſo; but as our treatiſe is intended as well for the uſe of unprofeſſional men, as for the aſſiſtance of novitiates in the profeſſion, we think we cannot be too explicit, and ſhall therefore briefly mention thoſe ſorts of eſtates and intereſts which are held not to be within the purview of the ſtatutes of wills, and which conſequently are not deviſeable.

Things not deviſeable.

Eſtates held in jointenancy, it has been before obſerved, are not deviſeable, and as the ſtatute 32 Hen. 8. requires that the deviſor ſhould be *ſeized of* the deviſed eſtate at the time of making his will, lands *afterwards* purchaſed will not paſs by a will previouſly made, unleſs it be renovated by republication. 1 *F. Vez.* 255. 2 *Ib.* 427. Yet by the favour of courts of equity, if the teſtator has *contracted* for the purchaſe, ſo that he has the *equitable* eſtate in him at the time of making his will, and the words of the will are ſufficiently comprehenſive to include the eſtate, it will paſs without a republication. *Prec. Ch.* 320. 2 *Peere Wms.* 629. 1 *Vez.* 437. and 1 *Brow. Ch. Ca.* 226.

But it is to be obſerved, that theſe obſervations apply to *freehold* eſtates only, for as to *perſonal* property, as terms for years, goods, &c. they will paſs, though not in the teſtator's poſſeſſion at the time of making his will, the reaſon of which, as ſtated by *Parker, C. J.* is that "though the freehold lands ſhould not paſs by the will, there is ſtill a perſon in law capable of taking them, viz. the *heir*; but in regard to the perſonal intereſt, if the executor ſhould not take them, it is uncertain who ſhall." 1 *Peere Wms.* 575.

Eſtates held in mortgage will paſs by *an expreſs* deviſe thereof by the mortgagee, but it ſhould ſeem not by *general* deviſe by way of reſidue. See *Co. Litt.* 8, 209. n. 96. and 3 *Vez. jun.* 348.

Eſtates turned to a right.

An eſtate turned to *a right*, as a reverſion diſcontinued, is not within the purview of theſe ſtatutes, and not deviſeable. *Cro. Car.* 387. 405.

Titles of dignity.

Titles of dignity, as dukedoms, earldoms, &c. (though formerly they paſſed as annexed to the eſtate) are not now deviſeable, being held to be perſonal and not territorial rights.

Offices and corrodies.

Offices and corrodies, being things annexed only to the perſon of the poſſeſſor, are likewiſe indiviſeable. *Pow. Dev.* 41.

Franchiſes alſo, when merely perſonal and not appendant to lands, fall under a like predicament. *Ibid.* And though not merely perſonal, yet if ſuch franchiſes are of ſuch a nature as that no certain annual value can be ſet upon them, they are ſtill indiviſeable. 3 *Co.* 32. 10 *Ibid.* 81. Franchiſes.

And for a ſimilar reaſon, their not being capable of any certain valuation, commons without ſtint, ways and the like, cannot be the ſubject of a deviſe. *Cro. Eliz.* 359. 2 *And.* 22. Commons without ſtint.

The foundation of the diſtinction between hereditaments capable of valuation, and thoſe which are not, ariſes on the wording of the ſtatutes of wills, which required a third, &c. of the *annual value* of inheritances, (according to the ancient tenures then in uſe,) to be reſerved for the cuſtody of the king, &c. which were held to imply that ſuch inheritances as could not be vulued, were not deviſeable, thoſe ſtatutes being the only authority for deviſing inheritances. See *Pow. Dev.*

Copyhold eſtates, or eſtates held by copy of court-roll, are not deviſeable, they being excepted out of the ſtat. 29 Car. 2. c. 24. which by converting all *other* eſtates into ſocage tenure rendered *them* deviſeable by the ſtatute of wills. And ſee 2 *Brow. Ch. Ca.* 56. Copyholds.

But though copyhold lands are not actually deviſeable, yet a teſtamentary power may be indirectly exerciſed over them by an application of the doctrine of uſes, by previouſly ſurrendering them to the uſe of the owner's will, when they become ſubject to the uſes in ſuch will declared, and will therefore paſs to his deviſee in like manner as any other eſtate, though it is not in truth by the will, but by the ſurrender that the eſtate is transferred; unleſs therefore they be previouſly ſurrendered to the uſe of the teſtator's will they will not paſs thereby. 3 *Vez. Jun.* 191.

The goods and chattels belonging to colleges, hoſpitals, and other aggregate corporations, are not ſubject to any teſtamentary diſpoſition, made by the maſter or head thereof. *Plow.* 525. Nor are the goods, &c. of the church bequeathable. *Ibid.* Property of corporations. Goods of the church.

III. *As to Perſons capable or not capable of taking by Will.*

We may here make a ſimilar obſervation to that which we made in the firſt ſection of our preſent inquiries, namely, that every perſon not labouring under ſome legal diſability is capable of taking by will. *Who may, and who may not, take by will.*

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As to married women.

Coverture is no disability in a woman to take a devise; for though at law she cannot take without the consent of her husband, yet a court of equity will oblige him to give his consent. *Perk.* 43. Though Perkins speaks only of a *conveyance* to a wife, the principle and the law is the same in respect of a *devise*.

Nor is a married woman disabled from being a devisee to her husband; for the reason of law which disqualifies her from taking a grant from her husband, because "husband and wife are one person," does not hold in the case of a devise, which does not take effect till after his death. *Co. Lit.* 112. b. 1 *Eq. Ca. Abr.* 173.

Aliens.

Nor is an alien, as such, incapable of being a devisee; but it becomes a question for whose *use* he will hold the devise; and it seems that he can hold no longer than till office found, when it will be forfeited to the king, and if he die before office be found, it will also go to the king, in want of heirs in the alien to inherit. 9 *Co.* 141. *Gouldb.* 102. 2 *Vez.* 360.

Catholics.

And since the stat. of 18 of the present king, repealing so much of the 11 and 12 Will. 3. c. 4. as disabled persons professing the Roman Catholic religion from holding lands, papists are capable of being devisees, on their taking and observing the oath prescribed by that statute.

Bastard.

A bastard whilst an infant cannot take by devise, because he has no name by which he may be identified; but after he has gained a name, by reputation, he may take by that description. *Co. Lit.* 3. b. *Dyer* 313.

Infant unborn.

But a legitimate infant though unborn may take by devise, 2 *Lev.* 135. 2 *Keb.* 300.

Nor can illegitimate children take under the general description of *sons and daughters*; nor will evidence be admitted that the testator intended they should. 3 *Anstr.* 684.

The persons we have as yet mentioned, as capable of taking by devise, are those who stand in their own proper and *natural* capacities; we shall now consider those who stand in a *civil* capacity.

These may be either in *esse* or not in *esse*, at the time of the devise. Civil persons in *esse* as *executors*, &c. may take in such their capacity of *executor*, &c. as well as in their natural capacity.

Civil persons.

But civil persons not in *esse* may likewise, under particular circumstances, take by devise, if it appear to be the intention of the devisor that they should; as when a

deviſe is made to the executors of executors, in their civil capacity. *Ibid.*

Pariſhioners are alſo held to be incapable of taking lands as deviſees in that character. *Pow. Dev.* 336.

Nor can a deviſe of land, or of any thing chargeable upon or payable out of land, be made to any charitable uſe; of which ſee more particularly 2 *Black. Com.* 273. and 2 *Burn. Eccl. Law. Tit. Mortmain.*

IV. *The Formalities requiſite to conſtitute a valid Deviſe.*

Requiſites to make a good deviſe.

We have already ſeen what is requiſite to conſtitute a valid will, as far as relates to the *deviſor*, the *things deviſed*, and the *deviſee*; we now proceed to the will itſelf, in order to conſider the formalities, required by law, to render it valid and efficacious. In this reſpect there is a material difference, between a will, deviſing *eſtates of inheritance*, and a teſtament, bequeathing only perſonal property. For eſtates of inheritance being, in the eye of the law, of higher regard than mere perſonal property, the legiſlature has required certain ſolemnities to accompany the diſpoſition of ſuch eſtates, with a view of guarding men *in extremes*, (that is, at their laſt moments, when their mental faculties may be deranged or impaired) from the liability of impoſition; and alſo to protect the heir at law from being diſinherited by his anceſtor, at a time when he might be incapable of due reflection: but no particular formalities, as we ſhall ſee hereafter, is required to accompany the diſpoſal of property merely perſonal.

Obſervations on Stat. 29 Car. 2.

In regard to eſtates of inheritance, it is enacted by 29 Car. 2. c. 3. (uſually ſtiled the ſtatute of frauds and perjuries), "that all *deviſes and bequeſts*, of any lands or tene-"ments deviſeable, either by common law, that ſtatute, "or the ſtatute of wills, or by force of the cuſtom of "Kent, or the cuſtom of any borough, or any other par-"ticular cuſtom, *ſhall be in writing*, and *ſigned by the party* "ſo deviſing the ſame, or by ſome other perſon *in his pre-"ſence*, and by his expreſs direction, and *ſhall be atteſted* "and ſubſcribed, in the preſence of the deviſor, by *three* "*or more credible witneſſes*, or elſe ſuch deviſes or bequeſts "ſhall be utterly void and of none effect."

We ſhall conſider this ſtatute in four points of view: 1. As to the conſtruction of the words, "deviſes and bequeſts." 2. The *eſtates* to which the ſtatute extends. 3. What ſhall be deemed a ſufficient *ſigning*, by the teſ-

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tator, and by the witneſſes, under the ſtatute. 4. Who are conſidered to be *credible* witneſſes.

1. Conſtruction of the words "*deviſes and bequeſts.*"

1. As to the conſtruction of the words "*all deviſes and bequeſts.*" Theſe being the firſt material words in the clauſe we are conſidering, it is obſervable, that the legiſlature has not in this ſtatute, (and we have likewiſe ſeen that it did not in the ſtatute of wills), preſcribe any particular form of words, in which a deviſe ſhall be conceived: what would have been ſufficient, therefore, before this ſtatute, will be ſufficient ſince; it follows, then, that any writing having the formalities of publication required by this ſtatute, and indicating the intention of the teſtator, to diſpoſe of his lands or hereditaments by will, (provided ſuch intention be not contrary to the rules of law,) will amount to a good deviſe.

Upon this ground it has been determined, that even a *deed*, if made with a view to the diſpoſition of a man's eſtate after his death, will conſtitute a good deviſe. *Finch* 193. 1 *Chan. Ca.* 248. 4 *Brow. Ch. Ca.* 353. 2 *F. Vez.* 235.

And ſo where it appeared from inſtructions given to an attorney, that the intention of the teſtator was to make a *will*, though a deed of conveyance was made, and *delivered as ſuch*, yet it was held to operate as a *will*. 1 *Mod.* 117. 3 *Keb.* 310. 1 *Show.* 69.

And upon the ſame principle, words of *deſire* or *requeſt* only, in a will, will create a truſt in the executors to ſatisfy the requiſition of a teſtator. 2 *Brow. Ch. Ca.* 38. 226. And ſo minutely do the courts regard the intention, that ſhould the teſtator expreſs himſelf incorrectly, they will ſupply the omiſſion of words, and other miſtakes, in order to effect it. 3 *Brow. Ch. Ca.* 494. 1 *F. Vez.* 362. *Ib.* 444. And they will for the ſame purpoſe take into conſideration the ſituation of the teſtator and his family. *Ibid.* 441. and ſee 1 *F. Vez.* 1. 75.

A deviſe will alſo be good, and operate as ſuch, (and not as a will and codicil,) though made at various times, and by ſeveral diſtinct memorandums, if it was intended by the teſtator to conſtitute one entire will, and it be properly ſigned and delivered. 1 *Bur.* 548. 2 *F. Vez.* 228.

But the whole will muſt be preſent at the time of atteſtation by the witneſſes. 3 *Mod.* 263. 1 *Eq. Ca. Ab.* 401. Unleſs, however, poſitive proof is adduced that it

was *not*, it will be left to the jury to find whether it was or not, under all the circumstances. 3 *Bur.* 1773.

And so a man may make several dispositions of several parts of his estates, by separate and distinct instruments, which will be considered in law, if not contradictory to one another, as constituting but one devise. 1 *Show.* 543. 553.

He may also make several and distinct wills of *different* interests, in one and the same estate. *Cro. Eliz.* 721. 1 *Vez.* 187.

So likewise may a latter devise modify and qualify a former. 2 *Atk.* 268. And may be made to take effect by reference to another instrument. *Cro. Jac.* 144. 2 *Atk.* 273.

In truth the intention of the testator is so entirely regarded, that, as we have said before, any kind of disposition, not expressly contrary to the rules of law, will constitute a valid devise.

2. Concerning the estates to which the statute extends. *2. Estates comprized in the statute.*

These we have already pretty fully considered in a former section, and have only here to add, that the statute does not extend to lands, &c. within any of our colonies or plantations; to which acts of parliament do not extend, unless where they are particularly named. 2 *Peere Wil.* 75.

But if the lands be situated in England, the will must be published conformably to this statute, though it be made abroad. *Ibid.* 291.

We may here observe too, that though the statute does not affect any disposition made of personal estates, yet a term of years *attendant on the inheritance* has been held to be within the spirit of the act; for such a term will in equity go to the heir, and not to the executor, and is in that respect to be considered as part of the inheritance. *Ibid.* 236. And *note*, it was said in this case, that every species of estate which would descend to the *heir*, must be devised according to the statute of frauds. 2 *Atk.* 72. 2 *Wils.* 329.

And so too the devise of a *trust* of inheritance requires the same solemnities, for otherwise the statute would be nugatory, and the same danger of fraud be incurred as by a devise of a legal estate in fee simple. 3 *Atk.* 152.

And when a power is given to appoint uses and trusts of lands, the will appointing those uses must be executed

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according to this ſtatute, for ſuch caſe is alſo within all the inconveniencies which the ſtatute was made to prevent. And though the power of appointing is effected by other writing in *the nature of a will*, it is the ſame. 1 *P. Wms.* 740. 2 *Ibid.* 258.

And if a will deviſing lands to a college, &c. be void under the ſtatute of frauds, it will not enure as an *appointment*, by virtue of 43 Eliz. c. 4. for the ſtatute is to be ſtrictly conſtrued to prevent fraud. 2 *Vern.* 597.

And when a legacy, or other ſum of money given by will, is primarily charged out of land, the will muſt be made and publiſhed with all the ſolemnities required to paſs the land itſelf; for as the money can be raiſed only by ſale or other diſpoſition of the land, it is conſidered in a court of equity as a deviſe of ſuch land. 2 *Atk.* 268—285. Rents likewiſe, if ariſing out of land, are in a ſimilar predicament, being comprized in the word "tenement," mentioned in the ſtatute. 2 *Vez.* 179. 2 *F. Vez.* 232.

Copyholds, we have formerly ſeen, are not within the ſtatute under conſideration. A will, therefore, directing the uſes of copyhold lands, in purſuance of a previous ſurrender for that purpoſe, is not ſubject to the formalities required by this act. 2 *Brow. Ch. Ca.* 56.

But though copyholds are excepted out of the ſtatute, yet it was held by the maſter of the rolls, in Hilary vacation 1727, that where a copyholder was ſeized of a truſt, or equity of redemption only, of a copyhold, ſuch truſt, &c. could not be deviſed but by a will executed according to the ſtatute, becauſe there could be no preſent ſurrender to the uſe of the will to paſs this truſt; and it was no prejudice to the lord to comprize the truſt of a copyhold within the ſtatute, as the perſon who has the legal eſtate is liable to anſwer all the ſervices. *Ibid.* 261. and *Sel. Ca. Chan.* 42.

Lord Hardwicke, however, was of a different opinion, and held that the truſt of a copyhold would paſs by a will not executed according to the ſtatute, as a copyhold ſurrendered to the uſe of a will would do, for that equity ought to follow the law, and make it at leaſt a legal intereſt. Vid. 2 *Peere Will.* 261 in notes; and 2 *Vern.* 597. And the ſame point was afterwards again agitated before his lordſhip, and received a like determination. 1 *Vez.* 229.

3. As to the formality of ſigning, and publication, by the teſtator, and the atteſtation and ſubſcription of the witneſſes.

3. Signing by teſtator and by the witneſſes.

Very ſoon after the paſſing of the ſtatute under our conſideration, doubts aroſe as to the conſtruction to be put on the word *ſigned*, viz. whether it ſhould be conſtrued in its ſtrict and ordinary ſenſe, or whether it ſhould be expounded liberally, ſo as to leave it open to the conſtruction of intention, to be inferred from the particular circumſtances of each caſe. The latter conſtruction at firſt prevailed, and it was adjudged, in a caſe of Warnford and Warnford, 2 *Stra.* 764, that *ſealing* a will was a ſufficient ſigning, within the ſtatute; but that doctrine has been ſince over-ruled, and it is now held that ſealing alone, without any ſignature by the teſtator, is inſufficient. 1 *Wilſ.* 333. 3 *Atk.* 486 (note).

Signing by teſtator.

As the ſtatute however does not ſay in what part of the will the ſigning ſhall be, a will was held to be good, which was no otherwiſe ſigned than by the teſtator's beginning his will by his name:—"I *John Stanley*," &c. in his *own hand-writing*. 3 *Mod.* 219. 1 *Eq. Ca. Abr.* 403.

But if the name of the teſtator be not actually written by himſelf, (or by his expreſs direction) no *intention* to ſign is ſufficient, though attended with the ſtrong circumſtance of his having made an *effort* to do it; for however willing the courts may be to conſtrue wills in ſuch a manner as to effectuate the intention of the teſtator, yet they cannot go ſo far as to give effect to a *conſtructive* ſigning, upon a preſumed intention. *Doug.* 241.

The ſigning of the teſtator muſt alſo be accompanied by a *publication*, *i. e.* a declaration that the inſtrument is his will; for though this is not required by the ſtatute of frauds, yet, as it was eſſential to the validity of a will at common law, and there is nothing derogatory from it in the ſtatute, it ſtill remains an indiſpenſable part of the execution. But as no particular form of words is required in the publication of a will, it has been held that the delivering it *as a deed* was a ſufficient publication, particularly as inconveniencies might ſometimes ariſe in a family, from its being known that a perſon had made his will. *Burn. Eccl. Law.* 117. 8 *Vin. Ab.* 125.

Publication by teſtator.

And therefore in the publication of a will, it is not neceſſary that the witneſſes ſhould be made acquainted with its contents; the teſtator's declaring it to be his will,

"that his will is contained therein," or the like, is all that is in any caſe requiſite, ſo that the witneſſes be able to prove the identity of the writing, that is to ſay, that it is the ſame which the teſtator in his life time affirmed to be his will. *Swinb.* 52. 3 *Bur.* 1773.

A publication has alſo been *inferred* from circumſtances of deliberate execution by the teſtator, in the preſence of the witneſſes, and deſiring them "to take notice," without any words declaratory of the inſtrument's being his will. *Burn Eccl. Law*, 114. See alſo, *Com. Rep.* 197.

It ſhould however be obſerved, that the caſe referred to in *Burn*, met with much oppoſition from the plaintiff's counſel; who inſiſted that the queſtion, whether a good publication or not, ſhould be reſerved for a caſe to be argued in the courts above; but the matter was afterwards compromiſed by the parties.

Subſcription & atteſtation of the witneſſes.

The atteſtation and ſubſcription of the witneſſes, in the preſence of the teſtator, is required by the ſtatute, principally with a view of putting a ſtop to the ſecret manner in which, previous to an intended fraud, wills were executed. But the buſineſs of the perſons atteſting the execution of a will, is not *barely* to witneſs the *manual* act of ſigning, but alſo to bear teſtimony of the *ſanity* of the teſtator; for as it is neceſſary, from the nature and import of the inſtrument, that the teſtator ſhould, at the time, be poſſeſſed of a ſound and diſpoſing mind, the courts have held, that the legiſlature muſt by implication have required them to atteſt that requiſite, as well as the ſimple act of ſigning, which it may be obſerved is the reaſon that a will is not permitted to be proved, as a deed is, by an exhibit *viva voce* in court. See 3 *Peere Wil.* 63.

The ſame liberal conſtruction has been allowed on the import of the word "atteſted," in the ſtatute, as in reſpect of the word "ſigning;" wherefore it is held not to be neceſſary that the witneſſes ſhould actually ſee the teſtator ſign his name, ſo that he acknowledge to them that the name is of his ſignature. 3 *Peere Wil.* 252. 2 *Vez.* 455. *S. C.* 1 *F. Vez.* 11.

But *note* that where a will was executed, firſt in the preſence of two witneſſes, and afterwards in the preſence of a third, and the teſtatrix ſaid, "This is my will," and deſired the witneſs would atteſt it, but did not acknowledge her ſignature; Lord Hadwicke expreſſed a doubt as to its validity. 2 *Atk.* 182.

Though the witneſſes muſt all atteſt the execution of the teſtator's will in *his* preſence, yet it is not neceſſary that it be done in the preſence of each other, 2 *Atk.* 176. But in this caſe it ſeems the better opinion, that the teſtator muſt acknowledge the ſignature of his name to be his, in the preſence of each. *Ibid.* 2 *Vern.* 429. *Prec. Chan.* 184. 1 *P. Wez.* 16.

It however become us to remark, on the caſe in *Atk.* that though the witneſs's atteſting at ſeveral times does not invalidate the will, yet it is by much the ſafeſt way that all three witneſſes be preſent at the ſame time; becauſe if one of the witneſſes who ſubſcribed ſeparately ſhould die, it might be difficult to prove the will, as the ſurviving witneſſes would not be able to prove the ſubſcription of the witneſs deceaſed, and the hand-writing of the teſtator would not be admitted where there were living witneſſes.

And where the witneſſes atteſt the execution ſeparately, it muſt be one and the ſame paper or inſtrument which they all atteſt; for their ſeparate atteſtation of different wills will not, when put together, make a good atteſtation of the whole: as where a man, after making a will of lands, atteſted by *two* witneſſes, made a codicil, in which the will was recited, and the codicil was atteſted by one of the former witneſſes and another; the court held ſuch an atteſtation to be inſufficient. *Carth.* 35. 1 *Show.* 68. 88. *S. C.* 3 *Mod.* 262.

And where a teſtator made his will unatteſted, and afterwards made a codicil which referred to the will, and was properly executed and atteſted; yet as it did not appear that the will was produced when the codicil was ſigned, the atteſtation was adjudged bad. *Gilb. Rep.* 5.

And where the will and codicil were upon one ſheet of paper, and the manner of ſubſcription, required by the ſtatute was complied with, it was held to be a fact to be left to the jury, whether, under all the circumſtances, the atteſtation ſhould be conſidered as referring to both inſtruments, or only to one of them. *Com. Rep.* 581.

But it is immaterial in what form, or on what part of the will, the atteſtation is made; it will therefore be good, though each witneſs write his name on ſeparate ſheets of the will, and that although the ſheets be not tacked together. 3 *Bur.* 1775. *Com Rep.* 410.

The next doubt which occurred on the conſtruction of

In the teſtator's preſence.

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the clauſe we are conſidering, was on the words "in the preſence of the teſtator."

And it is held, that if the witneſſes, at the time of their atteſtation, are within the view of the teſtator, ſo that he *may* ſee them ſubſcribe their names if he will, it is ſufficient, though they be not actually in his *preſence*, but in another room. 1 *Eq. Ca. Ab.* 403. *Salk.* 68. 395. 1 *Brown*, 99.

In the caſe here referred to, the teſtatrix was in her *carriage* whilſt the witneſſes atteſted her execution in an office, where it was ſworn ſhe *might have* ſeen them.

But unleſs the teſtator be in ſuch a ſituation as that it is *poſſible* for him to ſee the act of ſubſcription, it will be bad, though done *literally* in his preſence, for the reaſon of the requiſite is to guard againſt fraud in ſubſtituting another will in the room of the teſtator's. *Carth.* 79. *Comb.* 156. *S. C. Ca. Temp. Holt*, 222. 1 *Show.* 89. 1 *Peere Wil.* 239.

And it will make no difference if the witneſſes ſhould retire at the *expreſs deſire* of the teſtator. 2 *Show.* 288.

And on the principle of the clauſe being intended for the prevention of fraud, it has been ſaid, that though the will be atteſted in the ſame room with the teſtator, and he might have ſeen the witneſſes if he had choſen, yet if the ſubſcription be made in a ſecret and clandeſtine manner, the deviſe will ſtill be void, per Lord Cowper. 1 *Peere Wil.* 740.

And ſo where the teſtator was proved to be *inſenſible* at the time of the witneſſes ſubſcription, it was held not to be a ſufficient atteſtation within the ſtatute, though done in his preſence. *Doug.* 229.

Note. In Hands v. James, Com. 531, it was decided that the queſtion, whether preſent or not, was a fact for the opinion of the jury, under all the circumſtances of the caſe. And ſee 2 *Stra.* 1109, where it was determined not to be neceſſary for the atteſtation to ſet forth that the ſigning was in the teſtator's preſence, as that will be *preſumed*, unleſs the contrary be proved.

4. *Credibility of witneſſes.*

4. As to the credibility of witneſſes to a will.

The laſt eſſential words in the teſtamentary clauſe of the ſtatute, are "credible witneſſes."

The incompetency of witneſſes on account of their incredibility, ariſes, 1. from their being intereſted; 2. from their having been convicted of ſome infamous crime.

1. From being intereſted; and on this ground it was formerly held, that where a perſon was a deviſee, or to receive any benefit under the will, he was an incompetent witneſs under the ſtatute, becauſe he was intereſted in its eſtabliſhment, and therefore had a temptation to perjury, which it was the end of the ſtatute to guard againſt. 2 *Stra.* 1253. 1 *Lord Raym.* 505. Intereſted witneſſes.

But after the determination of this point, it became a ſerious conſideration, whether, in purſuance of this doctrine, many juſt wills might not be called in queſtion, on account of fees due to the teſtator's apothecary, or wages to his ſervants, who being uſually about him at a time of ſickneſs, are the moſt likely perſons to be called upon to atteſt the execution of his will.

To prevent theſe inconveniences, therefore, and to remove the doubts which had ariſen on the conſtruction of the word "credible," in the 29 Car. 2. it was enacted by 25 Geo. II. c. 6. that any perſon who ſhall atteſt the execution of any will or codicil thereafter to be made, to whom any beneficial deviſe, legacy, eſtate, intereſt, gift, or appointment, of or affecting any real or perſonal eſtate, (except charges on lands, tenements, and hereditaments for payment of debts) ſuch deviſe, legacy, eſtate, intereſt, gift, or appointment, ſhall be null and void, ſo far only as concerns ſuch perſon atteſting the execution of ſuch will or codicil, or any perſon claiming under him; and ſuch perſon ſhall, notwithſtanding, be admitted a witneſs to the execution thereof, within the intent of the act of 29 Car. 2. c. 3.

"And in caſe any lands, tenements, or hereditaments, ſhall, by will or codicil, be charged with any debts, and the creditor thereof ſhall atteſt the execution of ſuch will or codicil, ſuch creditor ſhall, notwithſtanding, be admitted as a witneſs within the intent of the ſaid act."

"And if any perſon ſhall atteſt the execution of any will or codicil then made, to whom any legacy or bequeſt ſhall be thereby given, whether the ſame be charged on lands, tenements, or hereditaments, or not, and ſuch perſon, before he give teſtimony concerning the execution of the ſaid will or codicil, ſhall have accepted, or have refuſed to accept ſuch legacy or bequeſt on tender thereof, he ſhall be admitted a witneſs within the intent aforeſaid."

Notwithſtanding this act, however, queſtions ſtill aroſe which gave occaſion to the further diſcuſſion of the queſ-

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tion of credibility; and it became a doubt whether, where the lands of the teſtator were charged with the payment of debts, two of his attornies, to whom he was indebted for buſineſs done, and the apothecary, to whom he was alſo indebted, were credible witneſſes within the 29 Car. 2. ſuch perſons not having been thought creditors within the meaning of the ſtatutes; but after the court had taken ſome time for deliberation, Lord Mansfield, in an elaborate judgment, delivered the opinion of the court in favour of the credibility. 1 *Bur.* 414. And in the ſame caſe his lordſhip was of opinion, that credibility could be conferred on an intereſted witneſs by payment or releaſe of his claim, as well in reſpect of wills made ſince as thoſe made previous to the ſtatute.

But *note*, as to this *latter* opinion, it is ſaid, that his lordſhip previouſly declared, that it was *perſonally* his own; and that if wrong, he alone was anſwerable for its errors.

And in Hindſon v. Herſey, reported 4 *Burn Eccl. Law*, 93, it was held by *Clive*, *Bathurſt*, and *Gould*, againſt *Pratt*, C. J. that a witneſs, though incompetent at the time of atteſtation by reaſon of intereſtedneſs, might purge himſelf by releaſe or payment of his claim.

We perceive, therefore, that the matter of credibility ſtill remains unſettled, when it refers to the eſtabliſhment of a will: *Lee*, *Camden*, and ſome of the puiſne judges, being of opinion that the credibility muſt exiſt at the time of *atteſtation*, and cannot afterwards be ſupplied, (and of the ſame opinion appears to have been *Thurlow*, Ch. ſee 2 *F. Vez.* 636,) and *Mansfield*, and other of the puiſne judges, thinking that credibility at the time of *proving* their atteſtation is ſufficient.

But there is no doubt that a legatee may be a witneſs *againſt* a will; for the reaſon of his excluſion in the *eſtabliſhment* of a will being the temptation he has to forſwear himſelf, he cannot be ſuſpected of that when his evidence goes in derogation of ſuch intereſt. See *Salk.* 691.

And ſo if it be indifferent to the witneſſes whether the will be eſtabliſhed or not, they are admiſſible, though they be legatees, &c. 1 *Bur.* 427.

Criminal witneſſes.

2. Incredibility on account of crimes. On this head it is to be remarked, that any one who has been guilty of an offence of ſuch a nature as to furniſh a fair preſumption that he is callous to a due ſenſe of the moral obligations of an oath or of juſtice, is conſidered as unworthy of credit in his teſtimony, and conſequently an in-

competent witneſs to the execution of a will, or to the ſanity of the teſtator; ſuch a witneſs being eaſily capable of accommodating his teſtimony to the wiſhes of any perſon whoſe intereſt it might be to invalidate the will. Amongſt offences of the above deſcription are reckoned all thoſe which are denominated *crimes*, or in other words, offences which are not merely *prohibited* by the *legiſlature*, but *infamous* and *criminal* in *their very nature* and eſſence. Theſe are principally the different ſpecies of *treaſon*, *felony*, *larceny*, *præmunire*, and *perjury*, all of which, and more particularly the laſt, render the malefactor incapable of any confidence or credit.

CHAP. II.

OF A TESTAMENT AS DISTINGUISHED FROM A WILL OR DEVISE.

IT has been obſerved in the preceding chapter, that there is a material difference in reſpect to the formalities requiſite in deviſing eſtates of inheritance, and in bequeathing property merely perſonal. The firſt of which we have ſeen is required to be in writing, to be ſigned by the teſtator, and to be atteſted by three witneſſes; but it is to be obſerved, that this ſtatute, not extending to goods and chattels, none of theſe requiſites are meterial in a diſpoſition of things coming under that deſcription. Theſe are, 1. Things merely *perſonal*, which compriſe every thing that is *moveable*, or which may be annexed to or attendant on the perſon of the owner; as cattle and other animals, money, jewels, books, houſehold-ſtuff, cloaths, corn, and whatever elſe may be transferred from one place to another. 2. Chattles *real*, compriſing ſuch eſtates, as though not freehold, partake of the realty, as terms for years, eſtates by ſtatute ſtaple, by elegit, and the like; but ſee *ante*, p. 17.

Written teſtaments,

Teſtaments may be either written or verbal, in which latter caſe they are termed nuncupative. As to written teſtaments, if in the hand-writing of the teſtator, they require neither ſigning, nor ſealing, nor witneſſes, ſo that

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ſufficient proof can be had of its being the teſtator's own writing. *Gilb. Rep.* 260.

And though it be neither in the hand-writing of the teſtator, nor ſigned by him, yet if it were written by his inſtructions, and afterwards have his approbation, it will nevertheleſs be a good teſtament of perſonal property. *Com.* 462.

We muſt obſerve, however, that it is by much the more ſafe and prudent way to have it properly ſigned, ſealed, and publiſhed by the teſtator, in the preſence of at leaſt two witneſſes, as it will be leſs liable to diſpute and litigation, and leaves leſs in the breaſt of the eccleſiaſtical judge.

Nuncupative, or verbal teſtaments.

Nuncupative teſtaments are from their nature ſo liable to impoſition, and were formerly found to be the occaſion of ſo many perjuries, that the legiſlature very properly adverted to them in the ſtatute of frauds, we have ſo often ſpoken of, and laid them under a variety of reſtrictions. By that ſtatute, c. 3, it is enacted,

1. That no nuncupative will ſhall in any wiſe be good, where the eſtate bequeathed exceeds £30, *unleſs* proved by three witneſſes, who were preſent at the making thereof, *and unleſs* they or ſome of them were particularly required by the teſtator himſelf to bear witneſs thereto, *and unleſs* it was made in his laſt ſickneſs, in his own habitation or dwelling-houſe, or where he had been previouſly reſident ten days at the leaſt, (except he be ſurprized with ſickneſs in a journey, or from home, and die without ever returning to his own habitation.) And,

2. That no nuncupative will ſhall be ſuffered to be proved or eſtabliſhed by the witneſſes after any longer period than ſix months from the making, unleſs ſuch teſtimony, or the ſubſtance thereof, be reduced to writing within ſix days after it be publiſhed.

3. That no nuncupative will ſhall be proved till fourteen days after the teſtator's death, nor then till proceſs has firſt iſſued to call in the widow or next of kin, to conteſt the ſame if they think proper.

4. That no written will ſhall be revoked or altered by any ſubſequent nuncupative one, except the ſame be in the life-time of the teſtator reduced to writing, and by him read over and approved, and unleſs the ſame be proved to have been ſo done by three witneſſes at the leaſt, which witneſſes muſt by the ſtatute of 4 and 5 Anne, c. 16. be ſuch as are admiſſible in trials at law.

It is provided, however, that the ſaid act ſhall not extend to any ſoldier in actual ſervice, nor to any mariner at ſea; who may diſpoſe of their moveables, wages, and perſonal eſtate, as before the making of the ſtatute. CODICILS.

Thus hath the legiſlature, Sir William Blackſtone obſerves, (2 *Com.* 500.) provided againſt any frauds in ſetting up nuncupative wills, by ſo numerous a train of requiſites, that the thing itſelf has fallen into diſuſe, and is hardly ever heard of but in the only inſtances where favour ought to be ſhewn, viz. when the teſtator is ſurprized by ſudden and violent ſickneſs.

CHAP. III.

OF A CODICIL TO A WILL OR TESTAMENT.

A CODICIL may be defined to be a ſupplement to a will, annexed to and to be taken as part of it, and uſed to explain or alter ſome diſpoſition therein. *Godolp.* § 1. Codicil.

The law relating to codicils agrees in general with that which relates to wills and tenements; like thoſe it may be either written or verbal; and where it is uſed for the purpoſe of deviſing *real eſtates*, it requires the ſame ceremonies to attend its execution as an original *deviſe*; and the ſame latitude is admitted in its form and publication, when its object is the diſpoſition of *perſonal property* only, as is allowed in an original *teſtament*. See 3 *Vez. jun.* 327. In ſome reſpects, however, they differ; for though a man can regularly make but one will or teſtament, he may make codicils without number, and unleſs contradictory to one another, they will all ſtand. *Swinb.* 15.

And a man cannot in the firſt inſtance, it is ſaid, appoint an executor by codicil, yet he may by codicil ſubſtitute another in the room of one originally appointed by the will. *Ibid.* 14.

Alſo where a teſtator leaves two wills, and it is uncertain for want of dates, which was laſt made, they will both be void; but if the like happen with reſpect of two codicils, and the ſame thing is given by one codicil

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to one man, and by another codicil to another, they ſhall divide the thing between them. *Swinb. Ibid.*

And further, where there are two wills of different dates, the firſt is void; but a former codicil will be void only ſo far as it is contradicted by the latter. *Ibid.* and ſee 3 *Bro. Ch. Ca.* 517.

So again where two legacies are given to the ſame perſon, one in the former and the other in the latter part of the ſame will, the legatee ſhall only take one of them. 1 *Bro. Cha. Ca.* 30. and *poſt.* "*Legacies.*" Whereas, if they be given him by two codicils; or by a will and a codicil, they will both be effectual. *Ibid.* 389. 1 *F. Vez.* 472. And the reaſon of this diſtinction is founded on the principle of a codicil's being a *ſupplement* to the will; the eſſential nature of which is (unleſs the contrary appears to be the teſtator's intent, ſee 1 *F. Vez.* 407, 497) to add to what has gone before. But yet where a ſecond codicil is *merely a repetition* of a former will, with the addition of a ſingle legacy, or the like, the former legacies are not doubled, ſuch not being preſumable to have been the teſtator's intention. 2 *Bro. Ch. Ca.* 251. 1 *F. Vez.* 464. and ſee 3 *Anſtr.* 727.

Theſe are the moſt material diſtinctions between a will and a codicil; ſuch others as may exiſt will be found in thoſe parts of our work to which they more particularly relate; their effect in republiſhing a will, is conſidered poſt. tit. *Republication.* Their effect in revoking a will is mentioned in the nex chapter.

CHAP. IV.

OF THE MEANS BY WHICH A WILL OR TESTAMENT MAY BE REVOKED OR ANNULLED.

Revocation *expreſs* and *implied.*

A WILL or teſtament may be revoked or annulled, either by ſome poſitive act of the teſtator, unequivocally ſhewing it to be his intention that his will ſhall no longer ſtand, which is an *expreſs* revocation; or by ſome act of a doubtful and equivocal import, furniſhing only grounds to preſume that the teſtator had ſuch inten-

tion, which is an *implied* revocation, or a revocation *in law*.

Expreſs revocations might formerly have been effected by a verbal declaration to that purpoſe. But now, by the aforeſaid ſtatute of frauds and perjuries, 29 Car. 2. c. 3. ſ. 6. It is enacted, "that no deviſe in writing of *lands*, "tenements, or hereditaments, or any clauſe thereof, "ſhall be revocable otherwiſe than by ſome *other will or "codicil* in *writing*, or ſome *other writing* declaring the "ſame; or by burning, cancelling, tearing, or obliter-"ating the ſame by the teſtator himſelf, or by ſome per-"ſon in his preſence, and by his directions and conſent. "But that all deviſes and bequeſts of lands and tenements "ſhall remain and continue in force until the ſame ſhall "be ſo cancelled, &c. or be altered by ſome other "will or codicil in writing, or other writing of the "teſtator, *ſigned in the preſence of three or more witneſſes*, de-"claring the ſame; any law or uſage to the contrary "notwithſtanding."

Expreſs revocation.

It is material to remark, what has probably occurred to the reader, that the *deviſing* clauſe, in the ſtatute of frauds, (ſee *ante*, p. 15.) requires the deviſe to be ſubſcribed by the witneſſes *in the teſtator's preſence*, but does not require that all the witneſſes themſelves ſhould be preſent together at the time of ſuch ſigning; but the *revoking* clauſe here ſtated requires that the inſtrument of revocation ſhould be ſigned *in the preſence of* three or more witneſſes. On this difference in the wording of the two clauſes, a diſtinction appears to have been taken, between a will *revoking merely*, and a will *deviſing and revoking*; upon which it has been held, that where a revoking will *deviſes alſo*, and ſuch will is void under the *deviſing* clauſe of the ſtatute, it will not take effect as a *revoking* will, though it be properly executed according to the forms preſcribed by the *revoking* clauſe; and if this diſtinction were rejected, there would be a repugnancy in the clauſe, for it firſt declares that a will may be revoked by another will, codicil, or writing, (which has been conſtrued to intend a will duly executed according to the *deviſing* clauſe, *i. e.* ſubſcribed by three witneſſes in the teſtator's preſence) and afterwards declares the revocation to be bad, (for the *altering* muſt be underſtood to mean *merely* by revocation) unleſs *ſigned by the teſtator in the preſence of three witneſſes*. If therefore a man would alter his will by ſimply revoking it, he may do it by any writing executed according to the latter part of the

Obſervations on ſtat. 29 Car. II. c. 3 §. 6.

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revoking clauſe; but if he would alter it by revocation and diſpoſition too, he can only do it by a will, executed conformably to the deviſing clauſe. See *Pow. Dev.* 647. alſo 1 *F. Vez.* 11. and 17. in *note*, where the diſtinction here adverted to is largely conſidered.

And it is to be obſerved, that the ſtatute affects only that ſpecies of revocation we are now ſpeaking of, namely, *expreſs* revocations; the law relating to implied revocations remaining the ſame as before the ſtatute.

On the firſt part of this ſtatute, relative to a revocation by ſome *other* will, &c. it has been determined that ſuch other will muſt in all reſpects be a good and valid will, or it will not amount to revocation of the former will. 1 *Eq. Ca. Abr.* 409. 1 *Show.* 89. 2 *Atk.* 272. 1 *Peere Wil.* 343. *Sed vid. cont.* 3 *Mod.* 218.

On the ſecond mode of revocation mentioned by the ſtatute, *viz.* burning, cancelling, &c. it has been held that theſe muſt be done, *with an intent to burn, &c.* to effect a revocation; for if done by miſtake, it is no revocation. *Cow.* 52. 1 *Peere Wil.* 346. 3 *Wilſ.* 508.

And upon the principle that the revocation of a will depends upon the intention of the party, it has been held that the ſlighteſt tearing or obliterating is ſufficient to revoke, when joined with a declared intent of annulling the deviſe. 2 *Black. Rep.* 1043.

And ſo if a teſtator have two parts of his will, and cancel one of them, it will be a cancelling of both, and a complete revocation. 1 *Peere Wil.* 346. 2 *Vern.* 742. *Prec. Chan.* 460.

And where it appears to have been the teſtator's intention to revoke his will, it may be done by an act which is void in law, as by a feoffment without livery, &c. 3 *Atk.* 72.

But yet where a revoking clauſe was indorſed on the teſtator's will, by his direction, and ſigned by four witneſſes in his preſence, but not ſigned by the teſtator himſelf, it was held not to be a revocation within the ſtatute. 3 *Lev.* 86.—It is obſervable, however, that *North* C. J. and *Levitz*, thought that, the teſtator's name being to the *will*, and as there was no intimation of fraud, it was ſufficient.

A will may alſo be revoked in *part* only, by a partial obliteration of particular bequeſts, whilſt the reſt of the will remains, as in *Cow.* 812.—This mode of revoking

bequeſts, it muſt however be obſerved, is very improper and unſafe. REVOCATION.

We now proceed to *implied* revocations, or revocations *in law*; and for the ſake of perſpicuity it may be proper to divide this head into, *Implied* revocation.

1. Revocations effected by the teſtator himſelf in *writing*.

2. Acts in *pais*, amounting to a revocation by conſtruction of *law*; which may be *firſt* by a change in the ſituation of the teſtator; *ſecondly*, by an alteration of his eſtate, *actually* made; and *thirdly*, by ſuch an alteration only meditated and intended.

1. Implied revocations effected by the teſtator in writing; are where a man, having made a will, afterwards makes another *inconſiſtent* with it, without expreſsly revoking the former, the fact of making a new will, furniſhing a neceſſary inference, that the teſtator had mentally revoked the old one. 3 *Wilſ.* 511. 1. Implied revocations in *writing*.

And ſo if, having deviſed his eſtate to two perſons, a teſtator afterwards deviſe it to one of them only; the latter deviſee ſhall have it. 3 *Mod.* 206.

But the bare circumſtance of a ſecond will's exiſting is not of *itſelf* a revocation of the firſt; for, as we have before ſeen, a man may make ſeveral wills of different parts of his eſtate, and all of them be good; it is only, therefore, where the one is contradictory and repugnant to the other, that the latter deviſe will operate as a revocation of the former. 1 *Show.* 537. 3 *Mod.* 203. 2 *Salk.* 592. *Show. Par. Ca.* 146. 3 *Wilſ.* 497.

But though a ſecond will be made, which is incon, ſiſtent with the firſt, yet it is not an *abſolute* and *immediate* revocation; for though by making a ſecond will it is clear the teſtator *intended at the time* to revoke the firſt, yet as wills are incomplete and revocable till the death of the teſtator, he may before that period change his intention; and if he do, and cancel the ſecond will, the firſt will remain intire as if no other had been made. 4 *Bur.* 2512. Unleſs indeed the ſubſequent will *expreſsly and in terms revoke* the former, in which caſe the better opinion ſeems to be, that the former will does not revive on the ſecond being cancelled. *Doug.* 40. *Cow.* 49.

So likewiſe where the teſtator, having made a new will, *actually* cancelled the old one, and afterwards cancelled the new will, it was held that the old will was not revived,

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though there remained a counterpart of the firſt will in the teſtator's poſſeſſion undefaced; for the revocation being, in both theſe caſes, an expreſs and independent act, rendered the former will abſolutely void, and left no room for conſtruction. *Ibid.*

A *codicil* alſo will be a revocation of the will, if it be inconſiſtent with it. 3 *Atk.* 552. 1 *Vez.* 32. But as a codicil is conſidered as a part of the will, and takes effect together with it, it is not *in its own nature* a revocation of the will, but operates as a revocation, ſo far only as it is repugnant to the particular diſpoſitions in the will, leaving it in all other reſpects undiſturbed. 1 *Vez.* 178. 186.

2. Implied revocations by acts in *pais*.

2. Revocations may be effected by acts in *pais*, amounting to a revocation in conſtruction of law. This may be *firſt*, by a material alteration in the ſituation of the teſtator; *ſecondly*, by an *actual*; and *thirdly*, by a *meditated* change in his eſtate.

Change in the teſtator's *ſituation*.

Firſt, in reſpect to a change in the *ſituation* of the teſtator; the only circumſtances which have as yet been held to be a revocation of his will, have been a ſubſequent marriage and iſſue, (*a*) which is conſidered as effecting ſo

(*a*) The implication furniſhed by the marriage and iſſue of the teſtator, that he intended to revoke the previous diſpoſition made of his property, being founded on the liberal preſumption, that having contracted a new relation, he means to perform the duties, and (in the language of Dr. Hay) "as new objects of care ariſe, extend to them that protective kindneſs which is morally and naturally due to them," and being liable (as an *equitable* conſtruction) to be encountered by every circumſtance indicative of a different intention, Mr. *Fonblanque* has very laudably exerted his known learning and ingenuity to induce the courts to extend this benign and beneficial concluſion in favour of *marriage alone*, for which "there requires no ſtretch of rational conjecture; the honour, integrity, and affection of the huſband may be preſumed upon, and upon that preſumption the moral claims of the wife may be ſatisfied; and no *precedent*, he obſerves, has expreſsly contradicted this concluſion. See 2 *Treat. Eq.* 355, n. (b) where the propriety of extending it to the ſingle circumſtance of the birth of a child after the execution of the will, is likewiſe con-

total a change in the ſituation of the teſtator, as inevitably to have produced a change in his mind relative to the diſpoſal of his property, the law not ſuppoſing that a man would contract a new relation without meaning to diſcharge the duties which attach to it. *Bur.* 2171. *Ibid.* 2182. *Doug.* 35. *Amb.* 487. 557. 721. 5 *Term Rep.* 57.

And it has been held to be immaterial whether the child be born before or after the teſtator's death. *Doug.* 31. 5 *T. R.* 49.

But theſe concluſions being upon an equitable conſtruction, ariſing out of the particular circumſtances of each caſe, may, like every other preſumption, be rebutted by collateral circumſtances; as where the will made previous to the teſtator's marriage is conformable to the principle of juſtice, and provided only for ſuch parties as he was bound to take care of. 1 *Eq. Ca. Ab.* 413. *Doug.* 31. 38. and ſee 2 *Brow. Ch. Ca.* 54. *Ibid.* 220.

And it is obſervable that in all the caſes which have occurred under this head, the teſtator diſpoſed of his *whole* eſtate; in which caſe the preſumption in favour of the wife and children is exceedingly ſtrong: but it by no means follows, that where a man diſpoſes of *a part only* of his property, the ſame concluſion is to be drawn; for many reaſons may occur to induce a man to withhold a part of his property from his family, and diſpoſe of it elſewhere. See *Doug.* 31. 38.

As to the will of a *woman*, made previous to marriage, though it is certainly ſuſpended during coverture, it ſeems doubtful whether marriage will amount to a revocation. See 4 *Co.* 61. 1 *And.* 181.—If however, the huſband die leaving the wife ſurviving, it ſeems that her will revives, and on her death will take effect as if no marriage had intervened. *Plow.* 343. But ſee 2 *Bro. Ch. Ca.* 534.

But though a change in a man's ſituation, as to connections, is a preſumed revocation of his will, yet it has been held that a mental incapacity does not operate as a revocation, nor does it ſeem reaſonable that it ſhould; for as revoking is an act of the mind, it cannot be exerciſed by one who has loſt his underſtanding. 4 *Co.* 61. 1 *Vern.* 185.

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tended for, when ſuch after-born child would otherwiſe be inſufficiently provided for.

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Alteration in the teſtator's *eſtate* actually made.

Secondly, As to an actual alteration in the *eſtate* of the teſtator.

Upon this ground it has been held, that not only an *abſolute ſale* by the teſtator, of his eſtate, ſubſequent to his deviſing it, will be a complete revocation of the deviſe, 1 *Bro. Cha. Ca.* 401. but where the *legal eſtate only* is transferred, it is a revocation, although the *beneficial* intereſt of the teſtator remains the ſame. 8 *Co.* 90. *Dyer*, 143. 1 *Roll. Ab.* 615. 1 *Atk.* 576. 2 *Atk.* 325. 7 *Brow. Par. Ca.* 177.

And "whenever the eſtate is modified in a different manner from that in which it ſtood at the time of making the will, there is a revocation." Per *Hard. Ch.* 3 *Atk.* 741. *Amb.* 116. 1 *Wilſ.* 308. 3 *Vez. jun.* 664. But where the teſtator retains the ſame eſtate and intereſt exactly, and diſpoſeable of by the ſame means, without any freſh modification, there is no revocation. See 2 *F. Vez.* 599.

And as equitable eſtates are governed by the ſame rules as legal eſtates, the ſame holds as to them, a deviſe of which will be revoked on any new uſes thereof being limited, or any other act done to alter the truſts upon which they are ſettled. *Show. Par. Ca.* 154. 2 *Atk.* 579. 4 *Bur.* 1961. 1 *Eq. Ca. Ab.* 411. 2. *F. Vez.* 598.

And where the whole *fee* is affected by the conveyance, the principle equally applies to the reſulting truſts. 1 *Eq. Ca. Ab.* 412. 3 *Wilſ.* 308. 3 *Atk.* 741.

And ſo it is where the thing of which a diſpoſition is made lies in grant; a will of which will be revoked by a ſubſequent grant, if the fee be affected. 3 *Atk.* 799.

And it makes no difference, it is ſaid, though the conveyance by which the eſtate is altered be made for a *particular purpoſe*, as to prevent dower, to let in an unborn ſon, or the like; provided the whole eſtate be affected. 1 *Roll. Ab.* 616. 3 *Atk.* 749. and ſee 2 *Brow. Cha. Ca.* 319. 3 *Vez. jun.* 664.

And even though the alteration in the ſtatute be made in order to give effect to the diſpoſition made by the deviſe, ſtill it will operate as a revocation of the will. 3 *Lev.* 108. 3 *P. Wms.* 163. 3 *Atk.* 749.

As where a man covenanted to levy a fine, which ſhould enure to the uſe of perſons to be named in his will; and after making his will levied a fine in purſuance of his covenant; it was held to be a revocation of the will; and

ſo of like caſes. See 1 *Roll. Ab.* 614. *Salk.* 341. 3 *Peere Wil.* 170. 3 *Atk.* 803. 1 *Brow. Chan. Ca.* 319. 2 *F. Vez.* 430. 599. 601.

The principle on which the above caſes proceed, is the preſervation of the eſtate to the heir, which the law in all caſes ſhews an anxious ſolicitude to effect; it therefore requires that the eſtate of the deviſor ſhall continue unaltered from the inception of the will till its conſummation by the teſtator's death: and the rule being eſtabliſhed ſolely for the benefit of the heir, and not with a view of effectuating the intention of the teſtator, the queſtion for conſideration is not whether the deviſor intended to revoke his will, but ſimply, whether he intended to do that act, the legal effect of which is to alter the intereſt which was antecedently in him; the revocation, therefore, in theſe caſes, is purely a conſequence of *law*, uninfluenced by, and independent of, any intention of the teſtator. See 2 *Atk.* 579. 3 *Ib.* 799. where the caſes we have been adducing are particularly adverted to, and the principles and reaſonings upon which they proceed are diſtinctly conſidered and recognized.

Inſtances of a ſimilar nature have occurred reſpecting terms for years, though proceeding on a different principle.

Thus a *ſpecific* deviſe of a *leaſe* for lives is revoked by a ſubſequent renewal; if ſuch renewal be complete at the time of the teſtator's death. 1 *Peere Wil.* 168. *575.* 3 *Ibid.* 163. And ſo of leaſes renewable on fines, &c. 2 *Atk.* 593. And though the deviſe be deſcriptive of the thing itſelf, and not the intereſt therein, it will be the ſame. 2 *Vez.* 418. and ſee 3 *Anſtr.* 821.

It ſhould be obſerved, however, that theſe caſes, reſpecting the renewal of leaſes, do not turn on any inability to diſpoſe of a future intereſt acquired in them, but on the words of the wills referring to the *then preſent* intereſt only of the teſtator, which intereſt is deſtroyed by the ſurrender. If therefore the words of the bequeſt refer to the eſtate and intereſt which the teſtator may *have at the time of his death*, the leaſes will paſs notwithſtanding any ſubſequent renewals. See 2 *Atk.* 599. 3 *Ibid.* 177. 199.

It was formerly held, that in all caſes ſimilar to the preceding, the eſtate muſt have been actually and ſubſtantially changed, in order to effect a revocation; but ſince courts of equity have conſidered articles for the ſale, or reſpecting the

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settlement of estates, when entered into for a valuable consideration, as an equivalent to an actual conveyance from the time they are agreed to be carried into execution, covenants or agreements likewise, (where the party has a right to a specific performance) have been held to operate as a revocation of a will. 2 *Peere Wil.* 329. 624. 2 *F. Vez.* 436, 601.

But where a man has an *equitable* interest in fee, and devises it, and afterwards, by a legal conveyance, takes the *legal* estate to the same uses, this will be no revocation; and though the devise were between the articles and the legal conveyance, the latter does not revoke the will, for of whatever kind it may be, it is only *instrumental* in changing an equitable into a legal estate. Per *Lord Hardwicke.* 1 *Wilf.* 311. and see 2 *F. Vez.* 429.

But his lordship observed, that it could not be laid down as a rule, equally general, that the turning a legal estate into an equitable one, would not be a revocation. *Ibid.*

Nor will a devise of land, executed in the interval between the execution of the first and last of several instruments operating as one conveyance, be revoked by such conveyance, because the whole transaction is considered as one act, done at the inception of the first instrument. 1 *Black. Rep.* 251—706. 2 *Bur.* 431. 4 *Ibid.* 1962.

Also a partition between tenants in common, is no revocation of a previous will, if the deed be confined to that object merely. 3 *Peere Wms.* 170. And though a fine be levied to accomplish the partition, it makes no difference. 2 *F. Vez.* 600. But if it be for any other purpose than merely the partition, it will operate as a revocation. 1 *Wilf.* 309. 3 *Atk.* 799. 2 *F. Vez.* 429.

Nor is a conveyance in fee for payment of debts, a revocation. 2 *F. Vez.* 600.

And it has been held that where a copyholder surrendered to new uses, with remainder to himself in fee, it was no revocation of his will, his old use in fee not being divested by the new surrender. 2 *Black. Rep.* 1046.

Intended alterations in the *estate* of the testator.

See the subject of Revocation elaborately considered. 2 *F. Vez.* 429, & seq. and 598, & seq.

We come *thirdly* to consider the effect of an alteration, not *actually made*, but only *meditated* and *intended* in the estate of the testator; and the reader will perceive that the cases we shall here adduce materially differ in their

principle from those of the former description, in as much as cases of an actual alteration, as we have seen, depend intirely and substantively on the operation of law, without any reference to the revoking *intention* of the party; whereas those of a meditated alteration only, advert invariably to that idea, and operate as a revocation, in proportion only to the strength of presumption they afford of such intention.

An instance of an intended alteration in the testator's estate, is that of his attempting to dispose of an estate by a conveyance, which for want of due formalities, as *livery*, *inrolment*, or the like, fails of taking effect; in which case, though the deed be void as to a transfer of the estate, it will operate as a revocation of a will previously made. 1 *Roll. Abr.* 615. 1 *Black. Rep.* 349. 3 *Atk.* 72. 3 *P. Wms.* 653.

So if a man, after devising his estate to one, make a fresh will, and devise it to the *poor of the parish*, or to a *corporation* not within the statute, the latter devise, though incapable of taking effect, will notwithstanding be a revocation of the former, and so of similar cases. 1 *Roll. Abr.* 614. 2 *Eq. Ca. Abr.* 359. 1 *Brow. Par. Ca.* 405. 9 *Mod.* 190. 10 *Ibid.* 287. 3 *Atk.* 72.

But as these cases turn upon the presumed intention of the testator to alter his estate, if it can be shewn that he in fact had no such intention, there will be no revocation. *Ow.* 76. *Gouldsb.* 32.

The cases we have at present adduced, have been those where the revocation has been produced by the act of the testator himself; but revocations may in some cases be effected *by the act of a stranger*; as if, after devising lands, he be disseised, and his estate turned to a right, it will not pass by the will, because at the time of his death, he was not seized thereof. *Ca. Temp. Holt*, 748. But if the devisor before his death re-enter, it will (according to some) purge the disseisin, and re-establish the will. Vid. *pro*, *Ibid.* 11 *Co.* 51;—*contra*, *Palm.* 205: *or by operation of law, without any act of the party*; as a devise of an annuity was held to be revoked by a subsequent subscription by the legislature. 2 *Ves.* 419.

As to revocations *pro tanto*.

Having as yet confined ourselves to such acts as constitute an *entire* revocation, usually denominated a revocation *in toto*, we shall now consider those which effect a *partial* revocation only, which is called a revocation *pro tanto*.

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Of this laſt ſpecies of revocation is a mortgage in fee; for as courts of equity exerciſe an excluſive juriſdiction over the ſubject of mortgages, they conſider the end of the mortgage, which evidently being not to revoke a previous will, but for the particular purpoſe of ſecuring the payment of a ſum of money, is looked upon in thoſe courts as of a mere *perſonal* nature, and therefore held to be a revocation *pro tanto* only, *i. e.* to the amount of the ſum borrowed. But before courts of equity aſſumed this juriſdiction, a mortgage in fee was *at law* held to be a total revocation of a previous will. 1 *Vern.* 329. 2 *Chan. Ca.* 154. 2 *F. Vez.* 417—598. 3 *Ibid.* 654. 685.

And, though the mortgage be made by *fine* alſo, it will make no difference. 2 *Peere Will.* 329.

A mortgage for years is alſo a revocation *pro tanto* only, and that as well at law as in equity: with this difference, however, that at law it is an abſolute revocation as to the *term*, though it does not affect the reverſion; whereas in equity it is partial, as well as to the term as the reverſion. 8 *Vin. Abr.* 156. But in the caſe here referred to it was at the ſame time unanimouſly held, that had the leaſe been to begin *preſently*, or at any time during the teſtator's life, it would have been no revocation, for it might then have determined in the life-time of the teſtator, and would not therefore have been inconſiſtent with the deviſe.

But a diſtinction has been taken in caſes where the mortgage is made to a ſtranger, and where it is made to the deviſee; for though it be only a partial revocation when made to a ſtranger, yet when made to a deviſee it has been held to be a revocation *in toto*, as being inconſiſtent with the deviſe. *Prec. Chan.* 514. And the ſame was held of a leaſe for years made to the deviſee, to commence after the teſtator's death. *Cro. Jac.* 49. But it has been ſaid, however, that if, in a mortgage for a term of years, a fine *ſur connuzance de droit come ceo*, be levied, it will effect a total revocation; *per Cowper*, ſee 8. *Vin. Abr.* 136.—*ſed quære.*

Upon the principle we before adverted to, of the mortgage being intended as a *ſecurity* merely, and therefore conſidered in equity as of a perſonal nature, it has been held that where the whole eſtate deviſed by a previous will had been conveyed in fee, in truſt to ſell for the payment of a debt, the conveyance was a revocation of the deviſe only to the extent of letting in the incumbrancer. See 2 *Atk.* 148. 272; and ſee a confirmation of

the ſame doctrine, *Prec. Chan.* 32. 2 *Vern.* 241. 1 *Eq. Ca. Abr.* 410. 2 *Ibid.* 176. 3 *Peere Wil.* 244. REPUBLICATION.

A leaſe for years, or life, is likewiſe a revocation of a will *pro tanto*. 3 *Vez. jun.* 653.

Alſo if a teſtator vary his will, as to part only of his eſtate, and leave the reſt unaltered, this will be a revocation only as to the part of the will ſo varied. 1 *Roll. Ab.* 616.

And ſo if a teſtator deviſe to one an eſtate in fee, and afterwards alter the deviſe to an eſtate in tail, it will be a revocation only to that extent. *Per Lord Mansfield, Cow.* 92.

CHAP. V.

CONCERNING THE MEANS BY WHICH A VOID WILL MAY BE RENEWED OR ESTABLISHED BY REPUBLICATION.

AS in treating of revocations we began with obſerving upon the ſtatute of frauds, as far as it affected that ſubject, and then proceeded to revocations at the common law; we ſhall here purſue the ſame courſe, and conſider, firſt, what formalities are required for the republication of a will under that ſtatute; ſecondly, what will amount to a republication in other caſes; and thirdly, the effect of a republication on the contents of the will.

1. And as to the formalities required for the republication of lands, it has been held that as the revoking clauſe in the ſtatute of frauds put an end to parol revocations, (which ſubſiſted at common law) ſo the deviſing clauſe in that ſtatute equally put an end to parol republications; for as the effect of a republication is to deviſe, and the ſtatute ſays that all "deviſes" of lands and tenements ſhall be in writing, &c. it muſt be conſtrued to extend to republications; the ſame ceremonies therefore which we have ſeen to be neceſſary in executing an original will, muſt be obſerved in the act of republiſhing it. 1 *Vez.* 440. 9 *Mod.* 78. 1. Republication under 29 Car. 2.

Unleſs in caſes of *conſtructive* republications, which, like conſtructive revocations, are not within the purview of the ſtatute; for theſe being inferences of law ariſing from facts, which are capable of being proved without

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the aid of parol evidence, they are not within the miſchief the ſtatute was made to prevent.

Thus where the teſtator having made a ſecond will, which was repugnant to, and conſequently a revocation of the firſt; afterwards deſtroyed the latter, and left the former uncancelled, this was held to amount to a republication of the firſt will. 2 *Atk.* 593. of which ſee more *ante* Chap. IV.

And a republication made agreeably to the requiſitions of the ſtatute, is held to ſupply any defect in the ability of the teſtator to deviſe at the time of making his will.

Thus where a perſon made a will of land during his minority, it was held that a re-execution of it after he came of age, was a confirmation of the will, and rendered it as valid as if originally made at that time. 1 *Sid.* 162. 1 *Keb.* 589. and ſee *poſt.*

2. Republication at common law.

2. Before the ſtatute of 29 Car. 2. the ſlighteſt circumſtances ſhewing the intention of the teſtator to confirm his will, was a ſufficient republication; and as that ſtatute affects only eſtates of *inheritance*, the ſame rule ſtill applies to diſpoſitions of every other ſpecies of property, whether real or perſonal. See 1 *F. Vez.* 497.

So that if a perſon having deviſed all his lands to another, afterwards purchaſes a *copyhold eſtate*, (which is not within the ſtatute) and *re-delivers* his will, it will be a ſufficient republication to paſs ſuch after-purchaſed lands. 1 *Roll. Ab.* 618.

And if, in the above caſe, inſtead of *re-delivering* his will, he merely ſays to a ſtranger, that ſuch lands ſhall go to the deviſee of his other lands, it will amount to a republication. *Cro. Eliz.* 498. *Moor*, 404. 2 *Chan. Rep.* 72. 2 *Vern.* 209. 1 *F. Vez.* 497.

Alſo where a teſtator made uſe of theſe words, "My will in the hands of *I. S.* ſhall ſtand," it was adjudged to be a good republication. 2 *Show.* 48.

In ſhort, any act or words of the teſtator, ſufficient to authorize a fair preſumption that he deſired his will ſhould remain, was at the common law, and therefore ſtill is, in reſpect of property not within the ſtatute of frauds, a good republication. See 1 *F. Vez.* 497.

As to codicils republiſhing wills.

Queſtions have ariſen, as to how far codicils are in themſelves a republication of a will; and alſo how far codicils diſpoſing of *perſonal* property only will affect a republication of a will of *lands*; upon which points the following are the principal caſes that have occurred.

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A teſtator, after making a new purchaſe of lands, had his will read to him, to which he ſaid nothing, but made a codicil, bequeathing ſome goods and legacies, which was annexed to his will; and the queſtion was, whether the codicil amounted to a republication of the will, ſo as to paſs the lands previouſly purchaſed; and it was held that it was, for by annexing the codicil the teſtator manifeſted an intent that his will ſhould ſtand. 1 *Eq. Ca. Ab.* 406. and ſee 2 *Bro. Cha. Ca.* 291. 511. 4 *Ibid.* 2. 1 *F. Vez.* 486.

And ſo where a leaſe deviſed by will was afterwards renewed by changing a life, a codicil afterwards made, and annexed to the will, was held to operate as a republication. 1 *Peere Wil.* 168. 2 *Vern.* 209.

And though the codicil be not *annexed* to the will, yet if by relating to the ſubject matter of the will, it appears that the teſtator conſidered the will to be valid, it will be a republication. *Com. Rep.* 381. 1 *Ven.* 437. 448. 3 *Peere Wil.* 329. *Cowp.* 158. *Amb.* 571. But in all theſe caſes it is to be underſtood, that the codicil was executed purſuant to the ſtatute.

Upon theſe authorities, therefore, (though, it muſt be confeſſed, that there are ſome others, of a contrary tendency, though of too little weight, in our opinion, to deſerve attention) it ſhould ſeem that every codicil, whether affixed to the will or not, and though it relate only to perſonal property, will, if *executed according to the ſtatute of frauds*, be a republication, and eſtabliſh a deviſe, of *lands*; and that, though not executed according to the ſtatute, will confirm a will of *perſonal* property.

A codicil may alſo republiſh a will, as to a part only of lands deviſed; its operation, when conſidered as a republication, being, as we ſhall ſee hereafter, to give effect to the words of the will, ſo far as they are applicable to the property of the teſtator at the time of ſuch republication. 2 *Peere Wil.* 329.

But it is to be obſerved that a codicil, in republiſhing a will, does not give it any quality of validity which it had not before; therefore a will not properly executed will not be helped by a codicil, though the codicil be executed according to the ſtatute. 2 *Vern.* 507; — except in caſes where the will and codicil make together but *one inſtrument*.

3. The effect of a republication upon the ſubject of the will.

3. We ſhall now make ſome obſervation upon the effect of a republication on the diſpoſitions in the will.

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The effect of a republication upon a will, is to give the words uſed therein the ſame operation as they would have had if the will had been made *at the time of republication*, and conſequently to extend its operation to all property purchaſed ſubſequent to the will that is conveyed by ſuch words. *Pow. Dev.* 683.

In queſtions of republication, therefore, the point to be conſidered is, not what the teſtator had in contemplation, *at the time of making his will*, but to what the words of the will extend, *at the time of republication*. On this principle it was held, that where a teſtator deviſed all his lands in *A.* and then purchaſed more lands in *A.* by republiſhing his will, the new-purchaſed lands paſſed together with the others. *Gouldſb.* 150. *Cro. Eliz.* 493; the effect being the ſame, as if the teſtator had made a new will, in which caſe "all his lands in *A.*" would have been a ſufficient deſcription.

And ſo if a teſtator deviſe, by the words "all his real eſtate," by a republication any after-purchaſed lands will paſs. 1 *Vez.* 442. *Ca. Temp. Holt.* 252. 748.

But where in his will he deviſed certain real eſtates, and by a codicil confirming his ſaid will, deviſed the *ſaid* eſtates to truſtees, &c. this republication was held not to paſs eſtates purchaſed between the time of his making his will and his codicil, for the preſumption, that the teſtator intended to paſs the latter eſtates, was rebutted by his expreſsly referring to the former eſtates. 7 *Term Rep.* 482.

Agreeably to the above rule it has been held, that a perſon not in exiſtence at the time of making the will, may be rendered capable of taking by republication, provided the deſcription in the will be ſufficiently apt to denote him; as where a father bequeathed a ſum of money, chargeable on a real eſtate, to his ſon *Joſeph*, who died; but afterwards, having another ſon of the ſame name, he by a codicil confirmed his will, and gave an additional portion to his ſaid ſon Joſeph; it was held, that the republication amounted to a ſubſtitution of the ſecond ſon Joſeph in the place of the firſt. 5 *Co.* 68. 1 *Peere Wil.* 275.

But the rule is not to be extended farther than the foregoing principle will ſtrictly warrant, namely, to give the words in a will the ſame effect as if firſt written at the time of republication.

Therefore though the word "ſon" in a will, is applicable to a grand-ſon as well as a ſon, where there is no

ſon in being; yet where a teſtator, by particularly noticing his grand-ſon, ſhewed he meant to uſe the word in its proper ſenſe, a republication of his will was held not to be a ſubſtitution of him in the room of a deceaſed ſon. 2 *Show.* 63. 3 *Mod.* 318. 2 *Vern.* 106. *and ſee Ibid.* 722. *Prec. Chan.* 439. RECAPITULATION.

CHAP. VI.

A SUMMARY, *or familiar* RECAPITULATION *of the* FORMER HEADS, *deſigned for the Uſe of* UNPROFESSIONAL READERS.

Preliminary obſervations.

WE have at length gone through the ſeveral heads we propoſed to conſider relative to the Law of *Wills*, *Teſtaments*, and *Codicils*; in which, by explaining the reaſons and principles upon which the caſes to which we had occaſion to refer were adjudged, we endeavoured to render ourſelves both intelligible to the uninformed reader, and inſtructive to the younger part of the profeſſion—but as, in diſcuſſing many of the points which neceſſarily came under our conſideration, particularly the ſtatutes of *wills*, and of *frauds* and *perjuries*, we unavoidably recurred to notions and expreſſions more refined and technical than we fear will be readily comprehended by thoſe who are unaccuſtomed to the inveſtigation of legal topics (but for whoſe uſe, nevertheleſs, the preſent ſheets are chiefly deſigned) we ſhall here recapitulate, in a familiar detail, ſuch practical formalities and requiſites as are material to be remembered and attended to by thoſe whoſe particular inclinations, or whoſe peculiar ſituation in reſpect to remote reſidence, or ſudden indiſpoſition, may induce or oblige them to frame their own wills, or other teſtamentary inſtrument.

The proper age of a teſtator.

1. The firſt thing to be conſidered by a perſon who is about to make a teſtamentary inſtrument, (whether ſuch inſtrument be intended to diſpoſe of his property by a *will*, in the firſt inſtance, or to add to, detract from, or otherwiſe alter; or to *revoke*, or *confirm* a will formerly made) is whether he has arrived at the age at which he is deemed by law capable of exerciſing a ſerious judgment in reſpect of the diſpoſal of his property.

This age, if the property to be diſpoſed of conſiſt of

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landed poſſeſſions, or other eſtates or intereſts, held in fee-ſimple (that is to ſay, held by the teſtator to himſelf and his heirs without condition or reſtriction) or held by him during the life of another, is *21 years*, both in reſpect of men and women; and in reckoning ſuch age the day of the teſtator's birth need not be reckoned, ſee *ante* p. 4. 9. 17.

But if the property intended to be diſpoſed of conſiſt of eſtates held for a certain term of years only, of money, whether in hand, in the funds, on mortgage, or otherwiſe, or of houſehold goods, plate, linen, or other things, which by common poſſibility may be moved from place to place, and made to accompany the perſon of the poſſeſſor, (for which reaſon theſe kinds of things are denominated *perſonal property*) the age at which the owner is allowed by law to diſpoſe thereof by will, is *fourteen* in males, and *twelve* in females *(ante* p. 4. 25.)

Teſtator's freedom of will.

2. The ſecond thing to be aſcertained is, that the perſon is ſo ſituated, in reſpect of circumſtances of diſcretion, as to be deemed in law capable of exerciſing a freedom of will, and a rational judgment. The circumſtances inducing a belief in the eye of the law that a perſon is incapable of diſpoſing of his property upon the ground of indiſcretion, are, 1. The being an *idiot*, *childiſh*, or *inſane*, which, though the perſons of this deſcription are generally inſenſible of their deficiency, it is proper to mention for the information of thoſe who are entitled to their effects upon their deceaſe, *(ante* p. 5.) 2. The being a *married woman*, unleſs indeed the huſband be abroad from ſentence of baniſhment for life, or unleſs on her marriage her huſband covenanted with her relations or friends, to permit her to diſpoſe of certain property by a will, *(ante* p. 5.) 3. The being under ſuch reſtraint by reaſon of threats, or other circumſtances of intimidation, as to be induced to make a diſpoſition contrary to his wiſhes, *(ante* p. 7.) Having been convicted of *treaſon* or *felony*, which offences render the delinquent incapable of diſpoſing by will, of any ſpecies of property whatever, or the being *outlawed*, which incapacitates him from diſpoſing of his *perſonal property* only. *(ante* p. 7.) 5. The being a foreigner born. This circumſtance, however, induces an incapacity in regard to freehold property only, and not to that of a perſonal nature, *(ante* p. 8.)

Property which may be diſpoſed of by will.

3. The third thing to be conſidered is, whether the property intended to be deviſed or bequeathed, is of ſuch a nature as, conſiſtently with the rules of law, is capable

of being the ſubject of a teſtamentary diſpoſition. As to which it may be remembered, that every ſpecies of property is capable of being diſpoſed of by will, except, 1. Eſtates of freehold not in actual poſſeſſion of the party at the time of making his will. 2. Eſtates turned to a right. 3. Titles of dignity. 4. Offices and corrodies. 5. Franchiſes of ſuch a nature that no certain value can be affixed to them. 6. Property belonging to colleges, hoſpitals, and other aggregate corporations. 7. Goods, &c. belonging to the church. 8. Copyhold premiſes, not previouſly ſurrendered to the uſe of the owner's will, (of which things ſee *ante* p. 12.) RECAPITULATION.

4. The fourth thing to be conſidered is, whether the object of the teſtator's benevolence is capable of taking what is intended him; this he will be unleſs he is, 1. An alien or foreigner born. 2. A catholic, refuſing to take the oaths of allegiance and ſupremacy. 3. An illegitimate child, not of ſufficient age to have acquired a name by reputation. 4. A deviſe of land, or of money charged upon, iſſuing from, or to be laid out in land for any charitable uſe, will alſo be invalid, (*ante* p. 14. 15.) Perſons capable of taking by will.

The teſtator having ſatisfied himſelf as to the requiſites to conſtitute a valid deviſe, as far as relates to his own perſon, the perſon of the deviſee, and the thing to be deviſed, he may proceed to frame his will agreeable to the forms delineated in the *Appendix* to the preſent Treatiſe; in doing which it is neceſſary that he ſhould deſcribe and particularize, as well the perſons he intends to benefit, as the property deviſed or bequeathed, in ſuch a plain and explicit manner, that no doubt can poſſibly ariſe after his deceaſe, in reſpect to any part of his intentions.

5. The only remaining thing will be for the teſtator to ſign and publiſh his will in the form preſcribed by law, which is as follows: Signing and publication of will.

If the property deviſed, or any part of it, conſiſt of eſtates of freehold, or of other the eſtates or intereſts deſcribed in ſec. II. the will muſt be ſigned by the teſtator, (or if he be from illneſs or other cauſe unable to write his name, or make his mark) by ſome other perſon in his preſence, and by his direction, in the preſence of three or more credible perſons, and then addreſſing himſelf to ſuch perſons, he muſt uſe the following words, "I publiſh and declare this to be my laſt will and teſtament, and deſire you will witneſs it," or words to the like effect, who

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must accordingly ſign their names to the atteſtation of the will, *in the preſence of the teſtator*, or at leaſt in ſuch a ſituation as he may ſee them ſign the ſame, *ante* p. 19. 21.

And it is here material to remark, that the perſons atteſting the execution of a will, muſt be credible and well-diſpoſed perſons, whoſe teſtimony, ſhould they afterwards be called upon, may be worthy the belief of an Engliſh jury. As to which matter it muſt be remembered, that no perſon to whom any legacy is given by the will, can atteſt its execution, for ſuch perſon being ſuppoſed to be too much intereſted in it to be worthy of credit, all legacies given to them are by expreſs act of parliament declared to be void, (*ante* p. 23.) Nor will any perſon convicted of any crime, be a good witneſs, ſuch perſons being likewiſe deemed unworthy of credit, (*ante* p. 24.)

The above regulations are neceſſary to be attended to, we have ſaid, in reſpect to a deviſe of things of a *freehold* nature; but, if the property given by will be of a nature merely perſonal, it is not *abſolutely neceſſary* that there ſhould be any witneſſes to the teſtator's ſigning, ſo that the ſignature be in his own hand-writing; but the ſafer and better way is, that it be ſigned in the preſence of at leaſt *two* credible witneſſes, who ſhould atteſt the ſame as before directed, only that it is not material that they ſhould in this caſe ſubſcribe their names in the *preſence of the teſtator*. (See *ante* Chap. II.)

Nuncupative wills.

As to *nuncupative* wills, or thoſe made by word of *mouth* only, ſee *ante*, p. 26, and *poſt*, *Appendix*.

Alteration of will.

6. It is further to be obſerved in reſpect to the diſpoſition of property by will, that if the teſtator, after having made his will, ſhould wiſh to revoke, add to, or otherwiſe alter any thing contained in it, it is not neceſſary that he ſhould frame it anew; for it will be equally effectual, if he expreſs his intentions, either at the foot of the will, or on a ſeparate paper to be annexed to it. But this ſubſcription, or annexed paper, muſt be ſigned and publiſhed by the teſtator in the ſame manner as if it were a new will; and as often as the teſtator acquires any *freehold* property, ſubſequent to his making his will, he muſt deviſe it in the manner we are ſpeaking of, unleſs he intends it ſhould deſcend to his heir at law, as no freehold lands, &c. acquired ſince the date of the will, will paſs by ſuch will, however comprehenſive the words uſed in it may be, unleſs the will be *republiſhed*, ſee *ante* Chap. V. in which caſe it will paſs to thoſe to whom the reſt of the teſtator's

freehold property may have been deviſed by the will; but if the property acquired ſince the making his will, be not freehold, but of a *perſonal nature* only, it will paſs by a will previouſly made to the legatees named in ſuch will, without any republication or new bequeſt, provided there be words in the will ſufficiently general to comprize the ſame. EXECUTORS, &c.

7. It may perhaps be unneceſſary to conclude with obſerving, that a will, whether of real or perſonal property, may be made void, not only by *tearing* and *cancelling* it, but by any other means of defacing or obliterating it, *ante* p. 30. in doing which no particular form is neceſſary, nor any witneſſes required to be preſent. Vacating a will.

A will may alſo be vacated by another will being afterwards made and duly executed in the manner before ſet forth, as it likewiſe may by ſuch alteration in the ſituation of the teſtator, or of his property, as is mentioned in Chap. IV.

CHAP. VII.

OF EXECUTORS AND ADMINISTRATORS.

WE do not recollect to have met with any treatiſe on the ſubject of executors and adminiſtrators, that appeared to us to be ſufficiently perſpicuous. Thoſe who have been led, by the great ſimilarity which ſubſiſts between theſe two offices, to treat of them together, have found it impoſſible to help confuſing the duties of the one with the duties of the other; and thoſe who, to avoid this perplexity, have treated of them ſeparately, have on the other hand been driven into numberleſs and tireſome repetitions: where one method of obviating a difficulty has failed, it ſeems expedient to try another; that which ſuggeſts itſelf as moſt likely to be ſucceſsful, is to ſeparate the reſpective duties of each, ſo far only as they are evidently diſtinct, and to blend them together in thoſe caſes wherein they are one and the ſame. With this view we ſhall conſider, Preliminary obſervations.

EXECUTORS, &c.

I. The office and duty of an *executor*, as distinguished from those of an *administrator*.

II. The office and duty of an *administrator*, as distinguished from those of an *executor*; and,

III. The functions and duties applicable to both.

1. Relative to their general power over the effects of the deceased.

2. Relative to the office of distributing those effects.

I. *Of the Office and Duty of an Executor, as distinguished from those of an Administrator.*

An executor.

An executor is one who is appointed by the testator, to carry into execution his will and testament after his decease; and, as far as concerns the goods and chattels of the testator, is equal to the *hæres designatus*, or *testamentarius* of the civil law.

Rightful.

Of executors there are two sorts; a *rightful* executor, properly appointed by the will of the testator, and a *wrongful* executor, stiled in law an executor *de son tort*, who takes upon himself the office of executor, by intrusion, and without being constituted by the testator or the ordinary. *Dyer*, 166. 3 *Term Rep.* 58.

Wrongful.

A wrongful executor is in no respect favoured by the law, on account of the great inconvenience that would follow if creditors were permitted to be their own carvers, and strive who should satisfy himself first. He cannot therefore retain the property of the intestate in discharge of his own debt, though of a superior degree. 2 *Term Rep.* 100. And he will be liable to an action, unless he deliver over the intestate's goods to the rightful administrator, *before* a suit be commenced against him. 3 *Ibid.* 590.

But the doing acts of necessity, prudence, or charity, as locking up the goods of the deceased for greater security, feeding or attending his cattle, milking his cows, or even burying the deceased, is not such an intermeddling as will charge a person with the consequences of his being an executor *de son tort*. 2 *Black. Com.* 507. See more particularly what acts of a stranger will so charge him, *Wentw. Exec.* c. 14. 5 *Co.* 33. *Salk.* 313. 2 *Term Rep.* 97.

He is liable to anſwer to the rightful executors, as alſo to the creditors and legatees of the deceaſed, to the amount of the goods of the teſtator, which he ſhall have improperly adminiſtered. 3 *Term Rep.* 587. 590. EXECUTORS.

And by ſtatute 43 Eliz. c. 1. the executors and adminiſtrators of an executor in his own wrong ſhall in like manner be liable to pay the debts of the teſtator; he may alſo be ſued for legacies and debts, as a rightful executor may, *Noy* 13; but he cannot on the other hand *maintain* any action, becauſe he has no will to produce as an authority. In equity, however, he will be allowed all ſuch payments as a rightful executor ought to have paid. 2 *Chan. Rep.* 33.

We have taken occaſion to mention here theſe few incidents, attaching upon a *wrongful* executor, becauſe we probably ſhall not have an opportunity of mentioning them elſewhere. We ſhall now proceed to a *rightful* executor, duly appointed by the teſtator.

Appointment of executor.

The appointment of an executor was formerly deemed an eſſential to every will; but though a will is incomplete *without an executor*, it is now held to be effectual to all material purpoſes. 2 *Chan. Rep.* 112. *Raym.* 1282.

The regular way of appointing an executor, is by expreſly naming him as ſuch in the will; but any words, indicating the teſtator's intention that a perſon ſhould be his executor, or in other words, have the execution of his will, will be deemed a ſufficient appointment.

This appointment may be abſolutely or conditionally, generally or ſpecifically, of part or the whole of the teſtator's eſtate, or in any other manner the teſtator chooſes; and if the executorſhip expire before the goods have been completely diſtributed, the ordinary may grant adminiſtration of thoſe remaining. *Wood Inſt.* 320.

Who may be an executor.

We have already ſeen who are by law allowed to make a will or teſtament; and it may be ſaid in general, that whoever is capable of making a will, is capable of being an executor; and ſome, who cannot make a will, may yet be executors, for married women and infants, though incapable of making a will, may be made executors; and in the caſe of an infant, though he be unborn at the time of appointment; but an infant could never act in the execution of his truſt before the age of 17, till which age adminiſtration was granted to ſome other diſcreet perſon, to act for him. *Went. Ex.* 342. And inconvenien-

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cies having arisen from granting probate to infants, it is now by 38 Geo. 3. c. 89. enacted, that where an infant is sole executor, administration, with the will annexed, shall be granted to the guardian of such infant, or such other person as the spiritual court shall think fit, until such infant shall have attained the age of 21 years, when, and not before, probate of the will shall be granted to him.

And so an alien may be an executor, though disabled from making a will. *Ibid.* 15. *Cro. Car.* 9.

Authority, &c. of executor.

An executor receives his authority from the will, and not from the *probate*, he may therefore do many acts in execution of the will before it is proved, as release, pay or receive debts, assent to legacies, and demise lands. 2 *Black. Rep.* 624. 3 *Term Rep.* 125. He may also be sued, or *commence* an action; but as he must produce his letters testamentary to the court, he cannot proceed till he has obtained probate. 1 *Salk.* 299. 2 *Vern.* 49. See more particularly what acts an executor may do before probate; *Godolph. Orph.* and *Went. Ex.*

If an executor die before probate, administration must be taken with the will annexed, because no one can prove the will, but he who is named executor. *Dyer.* 372. And if an executor die, his executor will be executor to the first testator, and there will need no fresh probate. 1 *Leo.* 275; for as the power of an executor is founded on the special confidence and actual appointment of the deceased, he is allowed to transmit that power to another, in whom he has an equal confidence.

If one of the executors prove, it is sufficient. 1 *Salk.* 311. and see 2 *Anstr.* 524, where the court directed an account against two executors, though only one of them had proved the will.

If all the executors refuse to prove the will, they cannot afterwards administer, or in any respect act as executors, unless indeed administration were granted to another on their first refusal, for they must be twice cited. 1 *Salk.* 308. *Plow.* 281. 9 *Co.* 37. *Cro. Eliz.* 92.

As the executor is constituted by the testator himself, and by him thought fit, the ordinary cannot set him aside for any disability at the *common law*, as on account of his becoming a bankrupt. *Salk.* 299; but it is otherwise of a natural disability, as insanity, idiotism, &c. 1 *Salk.* 36.

But it is to be observed, though bankruptcy does not invalidate the appointment of the executor, the court of

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chancery will appoint a receiver of the teſtator's effects, in order to protect them; as it alſo will upon the application of a creditor, if the executor appears to be waſting the aſſets. 3 *Brow. Cha. Rep.* 365.

So if an executor take out adminiſtration, or be once ſworn, (though he will not afterwards adminiſter,) the ordinary cannot make any other; for it was the teſtator's folly to make ſuch a one executor as will not adminiſter. 1 *Vent.* 335; but if he once adminiſter, he cannot afterwards refuſe, for he has then made his election; and if it were otherwiſe, he might convert the goods to his own uſe, and then refuſe to adminiſter; the ordinary may therefore, in ſuch caſe, iſſue proceſs to compel him to prove. 9 *Co.* 36. 1 *Mod.* 213.

And if an executor refuſe to take upon himſelf the execution of the will, he ſhall loſe any legacy which is bequeathed to him, unleſs it is probable, from nearneſs of kindred, or other circumſtances, that the teſtator would have given the legacy notwithſtanding. For the legacy is *primâ facie* ſuppoſed to be intended as a recompence for the teſtator's trouble. *Ow.* 44.

But he may take time to conſider, and the ordinary may in the mean time grant letters to any diſcreet perſon, to collect in the effects of the deceaſed. *Cro. Eliz.* 92; but ſuch perſon is properly neither executor nor adminiſtrator, his only buſineſs being to keep the goods in his ſafe cuſtody, and do other acts for the benefit of perſons entitled to the deceaſed's property.

If a creditor conſtitutes his debtor his executor, it is at law a releaſe or diſcharge of the debt, whether the executor act or not, provided however, there be aſſets ſufficient to pay the teſtator's debts; for though the diſcharge of the debt ſhall take place of all *legacies*, yet it would be unfair to defraud the teſtator's creditors of their juſt debts by a releaſe, which is abſolutely voluntary. 2 *Black. Com.* 511. But though ſuch appears to be the caſe at law, it ſeems otherwiſe in equity, for there the appointment of a debtor or executor is held to be only a diſcharge of the *action* at law, and not of the *debt*, which he muſt ſtill bring into the aſſets of the deceaſed. See 3 *Brow. Cha. Ca.* 110.

ADMINISTRATORS.

II. *Of the Office and Duty of an* Administrator, *as distinguished from those of an* Executor.

An administrator is one to whose charge are committed, by the ecclesiastical court, the goods and chattels of a person dying intestate.

The various sorts of administrators.

Administrators may be of various sorts, administrators *durante minore ætate, i. e.* during the minority of an infant executor or administrator; *durante absentia, i. e.* during the absence of the executor or administrator out of the kingdom; or *pendente lite, i. e.* during the pendency of a suit in the ecclesiastical court, concerning the validity of the will. 2 *Peere Will.* 589. 1 *Salk.* 42. 4 *Mod.* 15.

Administration granted during the infancy of an executor, till very lately ceased upon his arriving at the age of 17 years, at which age the spiritual court allows a person to take upon himself the executorship; but administration during the infancy of an administrator, always subsisted until the party attained 21, for an administrator is a trustee, and no one can act as a trustee till full age. *Salk.* 39. And by 37 Geo. 3. c. 7. the same is now the law in respect of an infant executor. See *ante* p. 50.

And in the first case, if the person appointed by the testator were a female infant, the administration would have ceased on her marriage with a person of 17, as her husband might then administer as executor. 5 *Co.* 29. but otherwise of an infant administratrix. And the like, it is presumed, would still be the case in regard to a female infant executrix marrying a person of the age of 21.

no executor appointed

And where a testator makes a will without appointing any executor, or names persons incapable of acting, or if the executors named refuse to act, the ordinary must grant administration *cum testamento annexo, i. e.* with the will annexed. And *note*, temporary administrations of this sort, not being within the stat. 31 Ed. 3. need not be granted to the next of kin. *Hob.* 250. 1 *Roll. Ab.* 907. 2 *Peere Will.* 576.

And in case the course of representation, from executor to executor, is interrupted by administration, it is necessary for the ordinary to commit administration afresh of the goods of the deceased not administered by the former executor, or administrator; for an administrator being merely an officer of the ordinary, in whom the testator has reposed no confidence, the administrator of the testa-

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tor's executor, or the executor of the inteſtate's adminiſtrator, is not allowed to be the repreſentative of the deceaſed, as the executor of the teſtator's executor is; therefore on the death of an adminiſtrator, it reſults back to the ordinary to appoint another. And ſuch an adminiſtrator is ſtiled adminiſtrator *de bonis non*, who is then the only repreſentative of the deceaſed in matters of perſonal property. *Sty.* 225.

Where the perſon has *bona notabilia*, (*i. e.*) perſonal property of the value of £5 in ſeveral dioceſes of the ſame archiepiſcopal province, adminiſtration muſt be taken out in the prerogative or archbiſhop's court. *Salk.* 39. And if the *bona notabilia* be in different dioceſes of different provinces, there muſt be a prerogative adminiſtration in both. *Ibid.* But if they are in one dioceſe of each province, adminiſtration will be granted by the biſhop of each dioceſe, of the goods, &c. within their reſpective juriſdictions, and if one dioceſe only, then by the biſhop of that dioceſe. *Ibid.*

If full adminiſtration be granted by a dioceſan biſhop, where there are *bona notabilia* in other dioceſes, the adminiſtration is abſolutely void; but if a prerogative adminiſtration is granted where the deceaſed had *bona notabilia* in one dioceſe only, the adminiſtration is not abſolutely *void*, but only *voidable* upon expreſs application for that purpoſe. 1 *Stra.* 74.

And note, that bonds and other *ſpecialties*, are *bona notabilia* in the dioceſe where they happen to be at the time of the inteſtate's death, but *ſimple contract* debts and ſecurities are ſuch only in the dioceſe where the debtor then reſided. *Cro. Eliz.* 472.

And either of the above ſpecies of adminiſtrators may have a limited or ſpecial adminiſtration committed to his care, *viz.* of certain ſpecific effects, as a term of years or the like, and the reſt may be committed to others. 1 *Salk.* 36.

But where a perſon dies wholly inteſtate, without either will or executors, then *general* adminiſtration is to be granted of his effects, according to the direction of 31 Ed. 3. c. 11, and 21 Hen. 8. c. 5.

The adminiſtrator, on his appointment is required to enter into a bond for duly adminiſtering the inteſtate's effects, and ſhould he neglect the requiſitions of the bond, he may, with the permiſſion of the ordinary, be ſued by any of the creditors, or next of kin of the deceaſed; both

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Who intitled to administration.

of which are intereſted in the diſtribution of his effects, *Comp.* 140.

Before the ſtat. of Weſtminſter 2, the ordinary had the abſolute diſpoſal of the inteſtate's eſtate, in order that he might diſtribute it for purpoſes of charity. By that ſtatute he was permitted to retain only the reſidue, after payment of debts; but the flagrant abuſes even of that power occaſioned the legiſlature again to interpoſe, in order to prevent the ordinaries from keeping the adminiſtration any longer in their own hands, or thoſe of their immediate dependants; and therefore, by ſtat. 3 Ed. 3. c. 11, it is provided that in caſe of inteſtacy, the ordinary ſhall depute the neareſt and moſt lawful friends of the deceaſed to adminiſter his goods; and theſe are interpreted, 9 *Co.* 39, to be the next in blood of the inteſtate, not being under any legal diſability, who are alſo by that ſtatute put upon the ſame footing, as to accounting, as executors appointed by will. Adminiſtrators therefore are only the officers of the ordinary, appointed by him in purſuance of this ſtatute. The ſtatute of 21 Hen. 8. c. 5. enlarges a little the power of the eccleſiaſtical judge, and permits him to grant adminiſtration either to the widow or the next of kin, or to both of them at his diſcretion; and where two or more perſons are in the ſame degree of kindred, gives the ordinary his election to accept which he pleaſes. 2 *Black Com.* 496.

In conſequence of theſe ſtatutes then the ordinary is now compellable to grant adminiſtration of the goods and chattels.

1. Of the wife's effects to the huſband or his repreſentatives. *Cro. Car.* 106. 1 *Peere Will.* 381. And of the huſband's effects to his widow, *or* next of kin; but he may grant it to either, or both, at his diſcretion. *Stra.* 532.

Adminiſtration, during minority, need not it ſeems be granted, according to the ſtatute, "becauſe there is an executor all the while." *Hob.* 250.

2. That amongſt the kindred of the inteſtate thoſe are to be preferred that are neareſt in degree; but of perſons of equal degree the ordinary may chuſe which he will.

3. That this nearneſs or propinquity of degree ſhall be reckoned according to the computation of the civilians, and not of the canoniſts, becauſe in the civil computation the ſeveral degrees are numbered from the teſtator himſelf, and not from the common anceſtor, ac-

cording to the rule of the canoniſts. *Prec. Chan.* 593. 2 *Vez.* 215. ADMINISTRATORS.

In the firſt place, therefore, the children, or on failure of the children, the parents of the deceaſed, are entitled to the adminiſtration, both which are indeed in the firſt degree; but with us the children are allowed the preference.

Then follow brothers, grandfathers, uncles, or nephews, and the females of each claſs reſpectively. 1 *Peere Will.* 40. *Prec. Chan.* 527. 1 *Atk.* 454.

And the couſins of the inteſtate are entitled to adminiſter on failure of all theſe. 2 *Black. Com.* 505.

4. The half blood is admitted to the adminiſtration as well as the whole, for they are equally akin to the inteſtate, and only excluded from the inheritance of land upon feodal reaſons. The brother of the half blood will, therefore, exclude the uncle of the whole blood; and the ordinary may grant adminiſtration to the ſiſter of the half blood or the brother of the whole blood at his diſcretion. 1 *Vent.* 425. 1 *Show.* 108. 2 *Vern.* 124.

5. If none of the kindred of the teſtator will take out adminiſtration, a creditor is allowed to do it. 1 *Salk.* 38.

6. And by 38 Geo. 3. c. 87. it is enacted, that if at the end of 12 months from the death of any teſtator, the executor to whom probate ſhall have been granted, is reſiding out of the juriſdiction of the king's courts, a creditor may, upon application, obtain letters of adminiſtration for the purpoſe of having his demand ſatisfied out of the aſſets of the teſtator.

7. If the executor of a teſtator refuſe to account, or die inteſtate, adminiſtration may be granted to the reſiduary legatee, in excluſion of the next of kin. 1 *Sid.* 281. 1 *Vent.* 219. And,

8. In defect of all theſe, the ordinary may commit adminiſtration (as he might have done before the ſtatute of Ed. 3.) to ſuch diſcreet perſon as he approves of. *Wentw.* c. 14.

9. Or the ordinary may grant to any one letters *ad colligendum bona defuncti*, viz. to collect in the goods of the deceaſed, which makes him neither executor nor adminiſtrator, his only buſineſs in this caſe being to keep the goods in his ſafe cuſtody, and do other proper and neceſſary acts for the benefit of ſuch as are entitled to the property of the deceaſed. 2 *Black. Com.* 505.

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10. And by the said act of 38 Geo. 3. it is provided, that where an infant under the age of 21, is sole executor, administration with the will annexed, shall be granted to the guardian of such infant, or to such other person as the spiritual court shall think fit, until such infant shall attain the age of 21 years, and such administrator shall have the same powers vested in him as administrator *durante minore ætate*, of the next akin.

In case of a bastard's dying intestate without wife or issue, or any other person dying without kindred, the king is entitled to his personal property, as administrator. 3 *Peere Wil.* 33;—but in the case of a bastard, it is usual for the crown to grant administration to some relation of the bastard's father or mother, reserving only a tenth part, or some other small portion, by way, it is presumed, of preserving its rights. 1 *Wood*, 398.

If there be two or more administrators, one of them cannot alone, as an executor may, release the debts of the intestate, or otherwise dispose of his property, but all must join, it not being a *several* but *joint* authority, that is delegated to them by the ordinary. 1 *Atk.* 460.

III. *The general Duties and Functions of both Executors and Administrators.*

1. In respect of the funeral of the deceased and the probate of his will.

2. Relative to their general power over the property of the deceased.

3. Relative to the distribution of his effects.

1. Burial of deceased.

1. The office and duty of executors and administrators, in burying the deceased, and proving his will.

The *first* thing to be done by an executor or an administrator, in discharge of their several duties, is to inter the deceased in a manner suitable to his rank in life, and the estate he has left behind him. And necessary funeral expences are allowed, previous to all other debts and charges; but if the executor or administrator be extravagant, it is a waste of the substance of the testator or intestate, which shall be prejudicial to themselves only, and not to the creditors or legatees of the deceased. 1 *Salk.* 296.

And it has been said, that in strictness "no funeral expences are to be allowed, as against *creditors*, except for

the coffin, ringing the bell, and the parſon's, clerk's, and bearer's fees, (and none for pall and other ornaments) the ſum allowed for which has uſually been from 40s. to £5. according to circumſtances. See 1 *Salk.* 296. 3 *Atk.* 249. But this rule has ſince been conſtrued with more liberality, eſpecially were a teſtator leaves great ſums in legacies, which is a reaſonable ground for an executor to believe him to be ſolvent. *Ibid.* & 3 *Atk.* 119.

Probate of will.

The *ſecond* thing to be done by an executor, or by a *ſpecial* adminiſtrator, (*viz.* during infancy, abſence, litigation, or adminiſtration with the will annexed) is to prove the will of the deceaſed; which may be done either in common form, by taking the oath duly to diſtribute, &c. or, in caſe the will be diſputed, in a more ſolemn form, by witneſſes of its due execution, &c. which being done under the eye of a court of juſtice, and neceſſarily conducted by profeſſional gentlemen, is beyond the limits of the preſent treatiſe.

And to prevent delay in diſtributing the effects of the deceaſed, (as alſo to prevent the revenue being defrauded) it is enacted by 37 Geo. 3. c. 9. ſec. 10. that every perſon who ſhall adminiſter the perſonal eſtate of any perſon dying, without proving the will of the deceaſed, or taking out letters of adminiſtration within 6 calendar months after the perſon's deceaſe, ſhall forfeit £50. *(a)*

When the will is proved, the original is to be depoſited in the regiſtry of the ordinary, where a copy is made upon parchment, under the ſeal of the ordinary, and delivered to the executor or adminiſtrator, together with a certificate of its having been proved before him; and this is what is called the *probate*.

In caſe there be no will, the perſon entitled to be adminiſtrator muſt in like manner, at this period, take out letters of adminiſtration under the ſeal of the ordinary, by which is veſted in him an executorial power, to collect and diſtribute the goods and chattels of the deceaſed; and in purſuance of a ſtatute paſſed in the 22 and 23 of Car. 2. he muſt enter into a bond with

(a) One moiety thereof to go to the king, and the other to the perſon who ſhall ſue for the ſame; the action to be commenced within 6 months after the time when probate or adminiſtration ought to have been taken out.

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sureties, to the satisfaction of the ordinary, faithfully to execute his trust.

If all the goods of the deceased lie within the same jurisdiction, the probate is to be made, or administration taken out, before the ordinary, or bishop of the diocese where the deceased lived; but if the deceased had goods or chattels to the value of £5, (which in those days were equal to about £70 of our money, 2 *Black. Com.* 509.) in two distinct dioceses or jurisdictions, then the will must be proved, or administration taken out, before the metropolitan or archbishop of the province in which the deceased died, by way of *special prerogative*. Whence it is, observes Sir W. Blackstone, 2 *Com.* 508. that the offices where the validity of such wills is tried, are called the *prerogative* offices. A prerogative, grounded upon the foundation, which we formerly noticed, *viz.* that as administrators are in effect nothing more than the officers of the ordinaries, and as the bishops were originally administrators to all persons dying intestate within their own dioceses, it was impossible for them to collect any goods of the deceased, except those which lay within such dioceses, beyond which their episcopal power does not extend. But it would be extremely troublesome, if as many administrations were granted as there are dioceses within which the deceased had effects of the value of £5; besides the uncertainty which creditors and legatees would be at, if different administrations were granted, to know out of which fund their demands were payable: a prerogative is, for these reasons, vested in the metropolitan of each province, to make, in such cases, one administration serve for all. The probate of wills naturally follows the power of granting administrations, in order to satisfy the ordinary that the deceased has in a legal manner, by appointing his own executor, excluded him from the privilege of administering the effects. *Vid.* 2 *Black. Com.* 509.

2. General power over the property of the deceased.

2. An executor, by virtue of the will of the testator, and an administrator by virtue of his administration, have an interest in all the goods and chattels, whether real or personal, in possession or in action *(a)*, of the deceased; and all such goods and chattels which come to their hands

(a) Things in action are debts and other duties *due* to the testator, but *not got into possession*.

will be *aſſets (b)* to make them chargeable to creditors and legatees.

And if the property of the deceaſed be loſt, or become irrecoverable through their wilful negligence, they will be liable to make it good. 2 *Brow. Ch. Ca.* 111. 156. 231. 1 *P. Vez.* 291.

And ſo if they retain money in their hands longer than is neceſſary, they ſhall be chargeable with intereſt, and coſts, if any incurred. 3 *Ibid.* 73. 413.

But one executor ſhall not be anſwerable for money received, or detriment occaſioned by the other of them, unleſs it has been by means of ſome *joint* act done by them. *Ibid.* 73.

Executors and adminiſtrators have in general the ſame remedies againſt others, for recovering debts and duties due to the deceaſed, as he would have had if living.

And adminiſtrators are entitled by ſtat. 31 Ed. 3, as executors are by the common law, to every ſpecies of *action* proper to recover debts due to the deceaſed, which he might have had during his life-time.

But they cannot maintain an action againſt another for any *perſonal* injury done to the deceaſed, when ſuch injury is of a nature for which damages may be recovered; for it is a rule of law, that *perſonal* actions die with the *perſon*; it never, therefore, can be revived, either by or againſt the executors or other repreſentatives of the deceaſed.

But in actions ariſing from breach of promiſe or the like, where the right deſcends to the repreſentatives of the party, though the ſuit ſhall abate by his death, yet it may be reſumed by or againſt his executors or adminiſtrators; for actions of this laſt deſcription are actions againſt the *property* of the deceaſed, in which the executors or adminiſtrators have the ſame intereſt that the teſtator or inteſtate had when living. *Murch.* 14. 3 *Black. Com.* 302.

And ſo likewiſe may they ſue for rent in arrear and due to the deceaſed in his life-time; and may alſo diſtrain the lands, &c. charged with the payment of it, ſo long as the ſame lands, &c. continue in the ſeiſin or poſſeſſion of the tenant, or of any other perſon claiming only from the ſaid tenant by purchaſe, gift, or deſcent, in like manner as their teſtator might have done if living. 32 Hen. 8. c. 37.

And by the ſame ſtatute the executors or adminiſtrators of any perſon, having an eſtate in fee-ſimple, fee-tail, or

(b) Aſſets are goods, &c. beyond what is ſufficient to pay the neceſſary funeral expences of the deceaſed.

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for life, in any rents or fee farms which ſhall have been due and unpaid in the life-time of his wife, ſhall, in caſe of the deceaſe of the huſband, have action of debt for the arrears, or may diſtrain for the ſame, in like manner as if his wife were alive.

And ſo of the executors or adminiſtrators of other perſons having any rents or fee farms for term of life. *Ibid.*

And by 11 Geo. 2. c. 19. it is provided, that when tenant for life of any lands, tenements, or hereditaments, ſhall happen to die before or on the day on which any rent was reſerved or made payable upon any demiſe of any lands, tenements, or hereditaments, which determined on the death of ſuch tenant for life, the executors or adminiſtrators of ſuch tenant for life ſhall, in an action on the caſe, recover of the tenants, or undertenants of ſuch lands, &c. if the ſaid tenant for life die on the day on which the ſame was made payable, the whole, or if before ſuch day, then a proportion of ſuch rent, according to the time ſuch tenant for life lived of the laſt year, or quarter of a year, or other time in which the ſaid rent was growing due.

Alſo by the cuſtom of merchants, an executor or adminiſtrator, may indorſe over a bill of exchange, or promiſſory note. 3 *Wilſ.* 1.

An executor or adminiſtrator may alſo, on the death of a leſſee for years, aſſign over the leaſe, and ſhall not be anſwerable for rent after ſuch aſſignment. *Cro. Eliz.* 715. 3 *Co.* 24. Nor ſhall they be liable for rent due after the leſſee's death, from premiſſes which he had in his life-time aſſigned to another. *Ibid.*

As to what covenants, &c. in leaſes, executors and adminiſtrators are bound to perform, we muſt refer to that diviſion of our work which treats of the laws concerning *Landlord and Tenant*, obſerving only generally here, that they are bound by ſuch covenants only of the deceaſed, as are as it were attached to or in the legal phraſe, "run with the land."

3 Diſtribution of the effects of the deceaſed.

3. The executor or adminiſtrator in order to the diſtribution of the effects of the deceaſed is to make an inventory of all the goods and chattels, whether real or perſonal, in poſſeſſion or in action, of the deceaſed, which, if required, muſt be delivered to the ordinary upon oath. And which, if ſo delivered, no creditor is at liberty to object to, 21 Hen. 8. c. 5. but it being thus binding upon the parties intereſted, it is by the ſame ſtatute required to be made in the preſence of two credible witneſſes.

They are then to collect in, as ſoon as they conveniently can, all the goods and chattels ſo inventoried, for which purpoſe the law has conferred on them extenſive powers and intereſts, they being the repreſentative of the deceaſed, and having the ſame property in his goods and chattels as their principal had when living, and the ſame remedies (as we have before ſeen) to recover them.

Whatever is recovered that is of a ſaleable nature, and can be converted into money, is called *aſſets* in the hands of the executor or adminiſtrator (from the French word *aſſez*, enough) and makes him chargeable to that amount, to creditors, legatees, and the kindred of the deceaſed.

Order of payment of debts.

Out of theſe the executor or adminiſtrator is to pay the debts of the deceaſed; and in doing this he ought to be particularly careful to obſerve the rules of priority eſtabliſhed by law, for otherwiſe, in caſe there ſhould be a deficiency of aſſets, and he pay debts of a lower degree firſt, he will be obliged to anſwer thoſe of a higher out of his own eſtate *(a)*. Theſe are as follows,

1. He is to diſcharge the funeral charges, the expence of proving the will, and other neceſſary expences incurred by the execution of his truſt.

2. Debts due to the king on record or ſpecialty. 1 *And.* 129.

3. Debts required by particular acts of parliament to be preferred to others, which are principally forfeitures for not burying in woollen, by 30 Car. 2. c. 3. Money due from overſeers of the poor for rates, 17 Geo. 2. c. 38; and money due to the poſt-office for letters, by 9 Anne, c. 10.

4. Debts appearing to be due by the evidence of a court of record, as judgments (if properly docquetted according to 4 and 5 Will. & Mar. c. 20), ſtatutes and recognizances; and thoſe recognized by a decree of a court of equity: as alſo debts due on mortgage. *Cro. Car.* 363. 4 *Co.* 60. 3 *Peere Wil.* 401.

5. Debts due to individuals on ſpecial contract, *viz.*

(a) But it is to be obſerved that the payment of debts according to their priority, applies only to *legal* aſſets, *i. e.* to ſuch effects of the teſtator as can be recovered by recourſe to a court of *law*, in contradiſtinction to thoſe which can be recovered only by the aſſiſtance of a court of *equity*. 2 *Atk.* 50. 1 *Brow. Ch. Rep.* 128. Concerning *equitable* aſſets, ſee poſt. p. 64.

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debts due on bond, or other inſtrument under ſeal, and alſo rent in arrear. *Wentw.* c. 12.

If however ſuch bond, &c. be proved to have been entered into without any good or valuable *conſideration*, a court of equity will direct it to be poſtponed to *ſimple* contract debts. 3 *Peere Wms.* 222.

And it is here material to notice that debts of *record*, mentioned in the preceding paragraph, the executor or adminiſtrator is bound to take notice of, at his peril. 2 *Vern.* 88. But not ſo as to debts due upon bond or other ſpecialty; for although he is required to pay debts according to their priority, yet he is allowed to pay a ſimple contract debt, before a debt upon ſpecialty, if he has no notice of ſuch ſpecialty, for otherwiſe the executor or adminiſtrator might be ruined by the obligor's purpoſely withholding his bond, &c. till all the aſſets of the teſtator or inteſtate had been diſtributed. 2 *Bac. Abr.* 43. 2 *Fonbl. Eq.* 407. n. (*m*).

6. Debts on ſimple contract, *viz.* debts ariſing by mere verbal promiſe, or by writing not under ſeal, as notes of hand, &c. and amongſt theſe wages due to ſervants are to be firſt paid. 1 *Roll. Ab.* 927.

And if no ſuit be commenced againſt an executor or an adminiſtrator, he may pay any one creditor of equal degree the whole debt, though there ſhould be inſufficient remaining to ſatisfy the reſt; for till ſuit commenced he has no legal notice of the debt. *Dy.* 32. 2 *Leo.* 60.

And it has been held, that even after a ſuit is commenced, he may ſtill, by confeſſing judgment to other creditors of the ſame degree, give them a preference. 1 *Peere Wil.* 295.

For otherwiſe if ſeveral actions ſhould come to be tried, at the ſame time, he might be doubly charged, and anſwer the value twice over (*a*). *Fr. Eq.* 411. And ſee 2 *Fonbl. Eq. Ibid. n. r.* and 412, *n.* (*s*).

(*a*) It may be here proper to obſerve, that ſhould the executor or adminiſtrator find the aſſets of the deceaſed ſo incumbered with various debts, as to render it unſafe for him to adminiſter them of his own diſcretion, he may apply to a court of equity to have them arranged according to their real priority. 2 *Vern.* 37. And this delay can in no caſe be attended with inconvenience to him, as he cannot be *arreſted* for the debts of the deceaſed, unleſs indeed he is *waſting* the aſſets. 3 *Wilſ.* 368.

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And *note*, executors and adminiſtrators are allowed, amongſt debts of equal degree, to pay themſelves firſt, by retaining in their hands, or paying to their co-executors or adminiſtrators ſo much as their reſpective debts amount to.

The reaſon of which is, that an executor or adminiſtrator cannot, without an apparent abſurdity, commence an action againſt themſelves, as repreſentatives of the deceaſed, for that which is due to them in their reſpective private capacities: and if this privilege were not allowed them, they would be put in a worſe ſituation than the reſt of the creditors, becauſe as they cannot commence any ſuit, they muſt neceſſarily be paid laſt, and would therefore, in caſes where the eſtate of the teſtator or inteſtate proves inſolvent, loſe their debt. *Plow.* 543.

But they are not allowed to retain their own debt to the prejudice of thoſe of a higher degree, for the law only intends to put them in the ſame ſituation as if they had themſelves ſued and recovered their debts, which they could not have done whilſt debts of a higher degree were ſubſiſting, *Viner*, tit. *Executors* D.

Neither ſhall an executor or adminiſtrator be allowed to retain his own debt, in preference to that of his co-executor or co-adminiſtrator, of equal degree, but both ſhall be diſcharged in equal proportion. 3 *Black. Com.* 18.

The *perſonal* eſtate of the teſtator is the proper fund for the payment of his debts, becauſe money borrowed, goods delivered, &c. went to the augmentation of the perſonal eſtate; yet if the teſtator expreſsly directs, that they ſhall be paid out of his *real* eſtates only, and they are ſufficient for the purpoſe, the perſonal will be exonerated. 1 *Brow. Ch. Rep.* 462. 2 *Ibid.* 60. 3 *F. Vez.* 475.

And on the principle of the perſonal eſtate being the proper fund for payment of debts, a mortgage made by the teſtator muſt be diſcharged by the executor or adminiſtrator out of the perſonal eſtate, if there be ſufficient to pay the reſt of the creditors and legatees, for the mortgage muſt have increaſed the perſonal eſtate to that extent. 2 *Cox, Peere Wil.* 664. 2 *Brow. Ch. Rep.* 101. But where the mortgage was not incurred by the teſtator or inteſtate, it is not payable out of the perſonal eſtate, becauſe in that caſe the reaſon does not apply. *Ibid.*

Where the teſtator leaves his real eſtate to truſtees or executors, for the payment of his debts, they become what

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are called *equitable aſſets*, in their hands, and are diſtributable according to the principles of equity, to all the creditors of whatever degree in the ſame proportion. 2 *Atk.* 50. 1 *Brow. Ch. Rep.* 138. And even creditors, whoſe demands are barred at law, by the ſtatute of limitations, will be let in. 2 *Vern.* 141. But a deviſe for payment of debts, muſt *provide for ſuch payment* in a *practical manner*, or it will not be taken out of the ſtatute. 2 *Brow. Ch. Ca.* 614.

Equitable aſſets are, generally ſpeaking, ſuch as cannot be attained without aſſiſtance of a court of equity; but this does not hold invariably, for the diſtinctions which prevail, we ſhall refer the reader to 2 *Fonbl. Eq.* 401, whence it will be collected, that aſſets may be conſidered as *equitable*, 1. When the teſtator's eſtates are charged generally with the payment of his debts, and the deſcent to the heir is at the ſame time broken, (ſo that he takes by *purchaſe*, and not by deſcent). 2. When the teſtator has purely an *equitable* intereſt in the eſtate deviſed, and that equitable intereſt has been made aſſets by any ſtatute.

And agreeably to the above rule, if creditors on ſpecialty have received a part of their debts out of the perſonal eſtate, they cannot receive out of the equitable fund till the other creditors have been paid an equal proportion of *their* debts. 3 *Peere Wil.* 322.

Creditors on ſpecialty, by which the deceaſed has bound himſelf and his *heirs*, may reſort to the heir, or to the executor or adminiſtrator, at their option; but if, by having recourſe to the executor or adminiſtrator, they ſo far exhauſt the perſonal eſtate, as not to leave ſufficient for the payment of the creditors by ſimple contract, and alſo the legatees, a court of equity will enable theſe to recover from the heir the amount of what the ſpecialty creditors had ſo taken from the perſonal fund. 1 *Vez.* 312.

When all the debts of the teſtator or inteſtate are diſcharged, the next thing which claims regard are the legacies of the deceaſed, which are to be paid by the executor or adminiſtrator as far as his aſſets will go. 2 *Vern.* 434.

The ſubject of legacies may ſeem to relate rather to the office of an *executor*; but it is to be recollected, that where a teſtator appoints no executor, or the executors refuſe to

act, and in all other cases where it becomes necessary to grant a special administration, the administrator has the same charge over legacies as a regular executor; and it would, besides, have too much broken in upon the order of distribution, to have treated of legacies in any other place. Exec^rs & Admin^rs.

The law respecting legacies being attended with some nicety; it will be proper to be somewhat particular in our observations upon it.

A legacy is a gift or bequest of goods or chattels, by testament. The bequest transfers an inchoate property in the legacy, but it is not complete without the assent of the executor, *Co. Lit.* 111; for, in him all the goods and chattels of the deceased are vested, and it is his business, first of all, to see whether there is a sufficient fund left to pay the debts of the testator; the rule of equity being, that a man must be just before he is permitted to be generous. 2 *Black. Com.* 512.—And in case of a deficiency of assets, all the general and pecuniary legacies must abate proportionably, in order to pay the debts; a *specific* legacy however (viz. a gift of a particular and identical thing as distinguished from *money*) is not to abate, unless there be not sufficient without it. 2 *Vern.* 111.

And so if legatees have been paid their legacies, and debts afterwards come in more than sufficient to exhaust the residue, they must refund a rateable part of what they have received. *Ibid.* 205.

It is a general rule, that if the legatee die before the testator, the legacy will (unless the contrary be expressed) be a lapsed legacy, *i. e.* will be lost, and sink into the residue of the testator's estate; and this is more particularly the case, in favour of the heir, where it is charged upon a *real estate*. 1 *Atk.* 50. 2 *Peere Will.* 601, and see *Ibid.* 612. n. (1.) and 3 *Brow. Ch. Ca.* 5. 108.—3 *Vez. jun.* 136. Lapse of legacies.

But the rule admits of many exceptions; and wherever it can be collected from the expressions or general import of the will, that it was the testator's intention to make it a vested legacy, it will be so, and go, in case of the death of the legatee, to his personal representatives. 1 *Peere Will.* 457. *Co. Lit.* 237. 3 *Brow. Ch. Ca.* 471. and see 3 *Vez. jun.* 430. 538.

So in general, where the legacy is charged upon the *personal* fund only, it will be an immediate interest, and

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be payable to the perſonal repreſentative of the legatee, notwithſtanding his death prior to that of the teſtator, unleſs the contrary be evidently intended. 1 *P. Wms.* 457.

In the conſtruction of legacies, a diſtinction has prevailed, grounded on the civil law, between a bequeſt to a man, *if* or when he attain a certain age, and a bequeſt to him *payable* at that age. In the firſt caſe the event of attaining the age ſpecified is held to apply to the ſubſtance of the legacy, and therefore will be loſt by the death of the legatee before the time; but in the other caſe, the event of attaining the ſpecified age is conſidered as applying not to the ſubſtance of the bequeſt, but merely to the time of payment; ſo that here the legacy does not lapſe by the death of the legatee before the time of payment. *Ibid.* and 3 *Brow. Ch. Ca.* 404. 471. 3 *Vez. jun.* 543.

And the ſame holds in reſpect of lands which will in either caſe be veſted in the devizee; and on his death deſcend to his heir. 3 *Term Rep.* 41. 3 *Vez. jun.* 135, 543.

And though, agreeably to this rule, the time ſpecified do refer to the ſubſtance of the legacy, yet if the teſtator direct intereſt to be paid in the mean time, it will nevertheleſs be a veſted legacy, for ſuch muſt be preſumed to have been the teſtator's intention; but ſuch preſumption is not furniſhed by any maintenance being given leſs than the intereſt. 2 *Brow. Ch. Rep.* 3. 3 *Ibid.* 416.

And if it appear from the will, that the time of payment of a legacy be poſtponed on account of the circumſtances of the teſtator's eſtate, and not on account of the circumſtances of the legatee, it ſhall be paid, notwithſtanding the previous death of the legatee; and that though it be charged upon the real eſtate, and payable at a future time. See 2 *Peere Will.* 612, and *Co. Lit.* 297. *a.* n. (1.) where the caſes on this head are collected and obſerved upon.

And where a legacy is given over to another in caſe the firſt legatee die under a certain age or the like, the legacy is payable immediately on the death of the firſt legatee; and though it be not given over, yet if it carry intereſt, his repreſentative will be immediately entitled to it; and in this caſe it is held, that if the intereſt allowed by the teſtator is leſs than what a court of equity would allow, the teſtator's executor will be entitled to the difference, until ſuch time as the firſt legatee would, had he lived,

have attained the age ſpecified. 2 *Peere Will.* 478. 1 *Brow. Ch. Rep.* 105.

And in caſe of a veſted legacy due immediately, and charged on land, or money in the funds, which yield an immediate profit, intereſt ſhall be payable from the teſtator's death; but if it be charged on the perſonal eſtate only, which cannot be immediately got in, it will carry intereſt only from the end of the year after the death of the teſtator. 2 *Peere Will.* 26; 1 *Vez. jun.* 367. 408. unleſs it be a child or children of the teſtator, who might otherwiſe periſh before the end of the year for want of a proper maintenance. 1 *Vez.* 310. 2 *Brow. Ch. Ca.* 58.

And if it be for neceſſaries, and the legacy be ſmall, the executors will be juſtified in advancing a part of the principal; but great circumſpection ſhould be uſed in caſes of this ſort, otherwiſe they may poſſibly be obliged to pay the full legacy on the infant's attaining twenty-one, without deducting the ſums previouſly advanced. See 3 *Brow. Ch. Ca.* 178.

Legacy cauſa mortis.

Beſides theſe formal bequeſts made by a man's laſt will or teſtament, there is alſo permitted another death-bed diſpoſition of property, which is called a diſpoſition *cauſa mortis*, *i. e.* in contemplation of death; which is where a man in his laſt ſickneſs delivers, or cauſes to be delivered, to another ſome goods, &c. to keep, or otherwiſe diſpoſe of in caſe of his deceaſe. 2 *Black. Com.* 513. 4 *Brow. Ch. Ca.* 72. This gift, if the donor dies, is good without the aſſent of the executor, but it will not prevail againſt creditors; and it is accompanied with the implied truſt, that if the donor recover, it ſhall revert to him again. *Prec. Chan.* 269. 3 *Peere Will.* 357.

Bonds, drafts upon a banker, bank notes, and bills payable to bearer, have been held to paſs by this mode of diſpoſition, but promiſſory notes or bills of exchange, being payable at a future day, are choſes in action, and cannot paſs by delivery. 2 *Vez.* 431. 3 *Peere Will.* 357. and 1 *Brow. Ch. Ca.* 612. 4 *Ibid.* 72. 286. where the nature and effect of this kind of diſpoſition is much conſidered, and many diſtinctions marked out relative to its efficacy in particular caſes.

We have now endeavoured to explain to the reader, the moſt obvious and general rules upon the ſubject of legacies, without encumbering his memory with the more ſubtile diſtinctions, which are generated and governed by

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the peculiar circumſtances of particular caſes; for theſe we muſt refer him to more voluminous treatiſes, amongſt which we cannot omit *Tr. Eq. B.* 4. *c.* 1, and 2. *(Fonb. Ed.)* where the ſubject is treated with conciſeneſs and perſpicuity. See alſo 2 *Blac. Com.* 512. and 3 *Vez. jun. Index.*

As to the *reſiduary* effects of the teſtator.

7. When all the debts and particular legacies are diſcharged, the ſurplus or reſidue muſt be paid to the reſiduary legatee, if there be any appointed by will; but if there be none, it will go to the executor or to the next of kin, according as it can be collected from the will to which of them the teſtator intended it ſhould go.

Thus where a competent legacy is given to the executor, the undeviſed reſidue of the teſtator's eſtate ſhall be divided amongſt the next of kin; for in that caſe it is impoſſible but to infer that the teſtator did not intend that his executor ſhould have the reſidue, as it would have been abſurd to give him expreſsly a part, if he meant he ſhould have the whole. 2 *Vez.* 97. 1 *Brow. Ch. Ca.* 154. 201. 1 *Vez. jun.* 66. and though the teſtator's wife be his executrix, it makes no difference. 1 *Brow. Ch. Ca.* 154. 4 *Ibid.* 239. 326.

But where ſuch an inference cannot fairly be drawn from the circumſtances of the will, the executor ſhall generally be allowed to retain the reſiduary fund to his own uſe, as if the whole of the perſon's perſonal eſtate is legally veſted in him by the will. *Prec. Chan.* 323. 1 *Peere Will.* 544. 2 *Ibid.* 338. 3 *Ibid.* 43. 194. 1 *Vez. jun.* 67.

So that where a legacy was given to one of two executors, it was held that they ſhould notwithſtanding take the reſidue, for the legacy might have been given merely to ſhew a preference to one executor above the other, and not to preclude them from the reſidue. 1 *P. Will.* 550, *Cox. ed. Prec. Ch.* 323. 2 *Vez.* 166. 2 *Atk.* 220. 1 *Brow. Ch. Ca.* 328. 590. 2 *Ibid.* 220. but it is otherwiſe when two equal legacies are given to both. 3 *Brow. Ch. Ca.* 110.

But if the reſidue be given to one who dies in the teſtator's life-time, and the bequeſt conſequently lapſed, the executor ſhall not therefore have it, though no legacy be given him; for by diſpoſing of it to another, the teſtator has expreſsly ſhewn that he did not intend it ſhould go to his executor. 3 *Brow. Ch. Rep.* 28. 1 *Vez. jun.* 475. and ſo in all other caſes, where from the tenor of the will it can be ſatisfactorily collected, that the teſtator *intended* to

exclude him from the reſidue. But, otherwiſe the *law* ſhall prevail. See the caſes on this head arranged and obſerved upon. 2 *Fonb. Eq.* 131. *n. (k).*

And in caſes where the executor is excluded, and there are no kindred of the teſtator; the executor will be conſidered as a truſtee for the crown. 1 *Brow. Ch. Ca.* 201.

Laſtly, it may be noticed, that where executors take the reſidue, they are held to be *jointenants* of ſuch reſidue, ſo that if one of them die before partition, his part will ſurvive to the other. 2 *Brow. Ch. Ca.* 220.

How reſidue to be diſtributed.

This reſidue, when it does not go to the executor, is to be diſtributed amongſt the next of kin to the inteſtate, according to the ſtatute of diſtributions, 22 & 23 Car. 2. c. 10, explained by 29 of the ſame king, c. 30, relative to the ſurpluſage of the effects of inteſtates, which by theſe ſtatutes are directed, after the expiration of one whole year from the death of the deceaſed, to be diſtributed in the following manner, *viz.*

If the deceaſed leave a wife and children, one third of his eſtate, after payment of debts, is to be given to the widow, and the reſidue to the children in equal proportions, or if any of them be dead, to their repreſentatives, *i. e.* lineal deſcendants.

But by the aforeſaid ſtatute, no repreſentatives are admitted amongſt *collateral* relations, beyond *nephews* or *nieces* of the deceaſed, after which it is to be recollected that the diſtribution will be *per capita*, and not *per ſtirpes*. See 1 *Ld. Raym.* 496. 2. *Blac. Com.* 517.

If there be no children, or lineal deſcendants of children, one moiety or half ſhall go to the widow, and the reſidue to the neareſt of kin to the deceaſed, and their repreſentatives.

If there be no wife, then the whole ſhall be diſtributed amongſt the children, and their repreſentatives.

But it is here to be obſerved that by ſtat. 22 and 23d. *Car.* 2. c. 10. If any child other than the heir at law, who ſhall have been portioned or otherwiſe provided for by his father during his life time, to an amount equal to the diſtributive ſhare of the other children, he ſhall be excepted from this diſtribution, and that if he ſhall have been in part provided for, he ſhall have only ſo much of the diſtributive ſhare, as ſhall make his portion equal to the reſt. But the heir at law, being excepted out of the ſtatute, will have an equal diſtributive part of the perſo-

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nal eſtate of the deceaſed, notwithſtanding any land he may take by deſcent or otherwiſe.

If there be neither wife nor children living, nor repreſentatives of children deceaſed, the whole is to be given to the father of the deceaſed.

If he have no father living, the whole ſhall go to the mother, and brothers and ſiſters of the deceaſed, in equal proportions, and the repreſentatives of the deceaſed brothers and ſiſters.

If there be neither of theſe, the whole to the mother.

If there be brothers and ſiſters, or children of ſuch, but no mother, the whole to ſuch brothers and ſiſters, or their children.

If there be neither of the before-mentioned kindred of the deceaſed living, then the whole ſhall go to his grandfather or grandmother.

After theſe, uncles and aunts, together with the nephews and nieces of the deceaſed, are admitted in equal proportions.

In failure of all the above, then the whole to the next neareſt a-kin of the deceaſed who ſhall be living. 2 *Blac. Com.* 514.

In which diſtribution, it is to be remembered, no diſtinction is made between the whole and the half-blood of the deceaſed. And the next of kin mentioned in the ſtatute, are to be aſcertained according to the computation of the civil law, including the relations both on the paternal and maternal ſide. And when relations are thus found, who are diſtant from the inteſtate by an equal number of degrees, they will ſhare the perſonal property equally, although they be relations of very different denominations, as where the next of kin are great uncles or aunts, firſt conſins and great nephews or nieces, theſe being all related to the inteſtate in the fourth degree, will be entitled to an equal ſhare of his eſtate. See 2 *Blac. Com.* 316. n. 23. To which rule there is but one exception, which is where the neareſt relations are a grandfather or grandmother, and brothers or ſiſters, though all related to the inteſtate in the ſame degree, the brothers or ſiſters take the whole in excluſion of the grandfather or grandmother. 3 *Atk.* 762.

Cuſtoms of *London* and *York.*

The reader is to be apprized, that the ſtatute of diſtributions before taken notice of, expreſsly excepts the cuſtoms of the city of London, and of the province of York. It will be proper therefore, for the information of perſons

residing within the jurisdictions of those places to explain the particular mode of distribution which is established by the customs of these districts respectively: and first of

Custom of London.

The custom of the city of London, relative to the distribution of intestate effects. This custom extends to all those who are free of the city, wherever they may have died, or wherever their effects may be situated: and is as follows;

After discharging the funeral expences of the deceased, and payment of his debts, (in which no priority is observed, debts of every description being deemed of *equal degree*, 5 *Co.* 83.) and after deducting what is called the widow's chamber, that is the apparel and bed-room furniture of the wife, the residue of his goods and chattels are to be distributed thus:

If there be a widow and a child, or children; it is to be divided into 3 parts:—one third of which is allotted to the widow, another third to the children, and the remaining third part (by the statute of 1 *Jac.* 1. c. 17.) to the administrator, to be divided amongst the next of kin, according to the aforesaid statute of distributions. 2 *Salk.* 426.

If there be children only without a widow; such children shall by the custom have one moiety, and the administrator the other. 1 *Peere Wms.* 341.

If there be a widow but no children;—three fourths of the intestate's effects shall go the widow (two fourths by the custom, and one by the statute) and the remaining fourth to the next of kin. 2 *Black. Com.* 518. But see *Post.* 11 *Geo.* 1. c. 18.

But if the wife be provided for by jointure before marriage, she shall be barred of her *customary* part; but she is notwithstanding entitled to her share by the statute, unless by express agreement. 1 *Vern.* 15. 2 *Ibid.* 665.

And if children are advanced with a sum less than their proportionable part during the father's life, they must bring into hotchpot with their brothers and sisters, but not with their mother, the money they have received, before they are entitled to their customary share. 1 *Eq. Ca. Ab.* 155. 2 *Peere Will.* 526. But if they have been fully advanced they have no further dividend. *Ibid.*

And *note*. The same custom relative to the distribution of the effects of intestates prevails in *Scotland* as in the city of *London*.

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The cuſtom extends only to wife and children; if therefore there be neither of thoſe, his effects are to be diſtributed according to the ſtatute of diſtributions. *Stat.* 22. c. 17. See *Show.* 175.

And it is to be obſerved that that part, and that only, which, in caſe the deceaſed die *inteſtate*, is mentioned to go to the adminiſtrator, *runs by the cuſtom*, even if he *make a will*, be diſpoſed of at his pleaſure. But now (by ſtat. 11 *Geo.* 1. c. 17.) it is provided that any freeman of London, who ſhall be married and not have iſſue by any former marriage, may give, deviſe, will and diſpoſe of his and their perſonal eſtate and eſtates, to ſuch perſon and perſons, and to ſuch uſe and uſes, as he or they ſhall think fit.

It is further to be remarked that the cuſtom of London extends only to the *perſonal* property of the deceaſed, citizens of London at the time of the origin of this cuſtom, not having regarded real eſtates, but employing all their fortunes in trade and commerce. 1. *Eq. Ca. Abr.* 150. 2 *Vez.* 593.

Nor are terms for years attending the inheritance within the cuſtom. 1 *Vern.* 104. but yet is a mortgage in fee. 1 *Ch. Ca.* 285.

It was formerly doubted whether the will of the citizen could in any way operate upon the widows or the orphanage part; but, it ſeems now to be ſettled that in reſpect to the widow, the huſband cannot by any means deprive her of her cuſtomary ſhare; yet, that ſhe may before marriage agree to accept a jointure in lieu of it, which will free it from the cuſtom. 2 *Freem.* 67. 1 *Eq. Ca. Abr.* 157. 158. 3 *Peere Wms.* 15. 321. 1 *Atk.* 63. 399. And in reſpect to the children, the father cannot deviſe either their orphanage part or the benefit of ſurvivorſhip between them, but he may bequeath them legacies inconſiſtent with the diſtribution under the cuſtom, which will put them to elect, whether they will abide by the will or take under the cuſtom. *For.* 130.

Province of York.

As to the cuſtom of the province of York, it differs from that of London only in two material points, (excluſive of the privileges given to the city of London, by the laſt mentioned ſtatute).

In the province of York, the heir at common law inheriting any lands, either in fee or in tail, is excluded from any portion of the perſonal eſtate, which he is not by the cuſtom of London. 1 *Vern.* 216.

And in the province of York, the child's ſhare is fully veſted in him immediately on the death of his father, and in caſe of his death, will go to his repreſentatives; whereas, by the cuſtom of London, it does not veſt in him until he attain twenty-one years of age; if therefore he die before that age (whether married or ſingle) his part will go to his ſurviving brothers or ſiſters. 1 *Vern.* 89. 2 *ib.* 558. GUARDIANS.

It is to be underſtood, that in both places, the cuſtom ceaſes on the children's attaining twenty-one, and their parts will then be diſtributable according to the ſtatute of diſtributions. *Prec. Chan.* 537.

Theſe provincial variations excepted, Sir William Blackſtone obſerves, the cuſtoms appear to be ſubſtantially the ſame. And as a ſimilar policy formerly prevailed in every part of the Britiſh iſland, it may be fairly concluded that the whole is of Britiſh original; or that if derived from the Roman law of ſucceſſions, it muſt have been much earlier than the time of Juſtinian, from whoſe conſtitutions in many points, particularly in the advantages given to the widow, it very conſiderably differs: though it is not improbable that the reſemblances which yet remain, may be owing to the Roman uſages, in the time of Claudius Cæſar, diffuſed by Papinian, (who preſided at York, as *præfectus prætorii*), and continued by his ſucceſſors till the final departure of the Romans. See 2 *Blac. Com.* 519) and *Kemp v. Kelſey. Prec. Ch.* 594.

CHAP. VIII.

OF GUARDIANS AND THEIR WARDS.

IN the firſt impreſſion of the preſent Treatiſe, the ſubject of guardianſhip of children was but ſlightly and incidentally noticed; but, in the preſent edition, we ſhall give it a diſtinct and more minute inveſtigation. In order to which we ſhall conſider,

I. The ſeveral kinds of guardians, their natures and incidents.

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II. The authority of guardians over the perſons and property of their wards.

III. The remedy of infants againſt their guardian, for abuſe of truſt.

I. *Of the ſeveral kinds of Guardians, their natures and incidents.*

The ſeveral kinds of guardians now in uſe, material to be noticed by us, are, 1. Guardians by *nature*. 2. Guardians for *nurture*. 3. Guardians in *ſoccage*, or by the *common law*. 4. Guardians by *ſtatute*, or *teſtamentary* guardians. 5. Guardians by the *cuſtom* of particular places. 6. Guardians by *election* of the infant. Each of which we ſhall treat of in the order we have here mentioned them.

Guardian by nature.

1. Of guardians by nature. Mr. *Hargrave*, whoſe minuteneſs of inveſtigation into legal topics, has ſeldom been equalled by any author of modern date, obſerves, in his learned obſervations upon *Coke's* 1 *Inſt.* that many of our books, particularly ſome of modern date, are very indiſcriminate, when they mention guardianſhip by nature. The inconvenience which muſt ariſe to the ſtudent from this inadvertency, he therefore, obligingly attempts to remove by a ſeries of valuable diſcriminations, to which we would refer ſuch of our readers as have been perplexed by the inaccuracies alluded to. (See *Co. Litt.* 88. *b. n.* 12.) and ſhall content ourſelves with preſenting the reader here, with an outline only of this ſpecies of guardianſhip. By the ſtrict language of our law, an *heir apparent* only can be the ſubject of a guardianſhip by nature: when, therefore, this ſpecies of guardianſhip is in the language of our *books* extended to children in *general*, or to any beſides an heir apparent, it is not conformable to the *legal* ſenſe of the term, but muſt be underſtood to have reference to ſome rule, independent of the *common law*; as where the father and mother are ſtiled the *natural* guardians of *all* their children, thoſe who expreſs themſelves ſo generally, muſt be underſtood to refer to that ſort of guardianſhip only, which the courſe of *nature* ſeems to point out where the *law* is ſilent.

The father, mother, and every other anceſtor of an infant, may in particular caſes be entitled to be his *guardian by nature*: the father however has the *firſt* title to ſuch guardianſhip, and the mother the *ſecond*. As to other an-

ceſtors, it is ſaid that where an infant happens to be heir apparent to two, as a grandfather by the father's ſide, and likewiſe a grandfather by the mother's ſide; he who happens firſt to have poſſeſſion of the infant's perſon, ſhall be his natural guardian. GUARDIANS.

Guardianſhip by nature, extends to the *perſon* only of the infant, and continues till the age of twenty-one years in males, and that age or marriage in females. 2 *Inſt.* 260.

We are not, however, to conclude that becauſe what our law calls guardianſhip by nature, is confined to *heirs apparent*, the parents have not a right to the cuſtody of their *other* children, for

2. Our law gives the cuſtody of children to their parents, in the guardianſhip by *nurture*; which ſpecies of guardianſhip, though it differs from that by nature in name and alſo in ſome other particulars, is founded on a like conformity to the order of nature. This ſpecies of guardianſhip occurs only when the infant is without any *other* guardian; and no one is entitled to it except the father or mother. And when the infant has neither of theſe, the ordinary uſually aſſigns ſome diſcreet perſon to take care of the infant's perſonal eſtate, and provide for his maintenance and education. 1 *Blac. Com.* 461. Guardian by nurture.

Guardianſhip by nurture extends no further than the cuſtody and government of the infant's perſon, and determines at the age of fourteen, both in males and females.

3. Next are guardians in *ſoccage*, who are alſo called guardians by the *common law*. Theſe take place only when the infant is entitled by *deſcent* to ſome eſtates in lands held in *ſoccage*, (which all lands except copyholds, now are by 12 *Car.* 2. c. 24.) and then by the common law the guardianſhip devolves to his next of kin, to whom the inheritance of ſuch lands cannot poſſibly deſcend; the law judging it improper to truſt the perſon of the infant in his hands, who may by poſſibility become heir to him, that there may be no temptation nor even ſuſpicion of temptation for him to abuſe his truſt. 1 *Blac. Com.* 461. *Co. Litt.* 87. *b. n.* (1) 12 *Mod.* 176. This guardianſhip belonging to the next of blood of the infant, ariſes by deſcent; in reſpect of which there is no diſtinction between the *whole* and the *half* blood: and if there are two or more in equal degree of kindred to the infant, he who firſt gains poſſeſſion of him ſhall be his guardian; except only where they happen to be brothers or ſiſters, or to be Guardian in ſoccage.

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the lineal anceſtors of the infant; in the former of which caſes the *eldeſt* is preferred, and in the latter the *male* anceſtor. But if the infant derives land by deſcent both *ex parte paternâ* and *ex parte maternâ*, that is to ſay, by the father's ſide and mother's ſide likewiſe, (when it may not be poſſible to find any next of kin of the infant incapable of inheriting his eſtate) the next of kin firſt getting poſſeſſion of the infant, ſhall have the cuſtody of his *perſon*: and the guardianſhip of thoſe lands which came to him *ex parte paternâ* ſhall belong to the *maternal* heir, and of thoſe which came *ex parte maternâ* to his *paternal* heir. If it ſhould happen that the perſon who according to the preceding rules, is entitled to the guardianſhip ſhould himſelf be under the cuſtody of a guardian, ſuch guardian ſhall have the cuſtody of the perſon ſo entitled, in right of his *ward*. See *Co. Lit.* 8vo. 88. *b. n.* (13.)

This ſpecies of guardianſhip being a perſonal truſt, wholly for the infant's benefit, is neither tranſmiſſible by deſcent, grant, nor deviſe: if therefore the guardian in ſoccage die or become incapable of performing his truſt, the guardianſhip devolves on the next neareſt of kin to the infant. *Co. Lit.* 88. *b. n.* 13. But yet where a woman is guardian in ſoccage, and marry, her huſband will in her right become the infant's guardian. *Plow.* 294. *Co. Lit.* 89. *a.*

Though this ſpecies of guardianſhip is deſcribed to lie in *tenure*, viz. it can ariſe only where the infant has lands or other hereditaments, lying *in tenure*, holden by ſoccage; yet the authority of the guardian, when appointed, extends not only to the *perſon* and the *ſoccage* lands of the infant, but alſo to all other his hereditaments, though *not lying in tenure*, and even to his copyhold eſtates (unleſs by ſpecial cuſtom the lord has right of appointing a guardian of them). But whether the guardian in ſoccage is entitled to the cuſtody of the *perſonal* eſtate of the infant, does not appear to be determined by any expreſs authority. Mr. *Hargrave*, however, on the idea which he profeſſes himſelf to entertain that the cuſtody of the infant's perſon draws after it the cuſtody of every ſpecies of property for which the law has not otherwiſe provided, "is inclined to think that *perſonality* is included within the ſcope of the guardian's authority, unleſs where by the cuſtom of a particular place, it happens to be liable to a different cuſtody." See *Co. Lit.* 88. *b. n.* 13.

The guardianſhip ends according to ſome (ſee 1 *Com.* 42. 3 *Bac. Abr.* 489) upon the infant's attaining the age of four-

teen, whether male or female, (unleſs the female marry, in which caſe her wardſhip ceaſes. 2 *Inſt.* 260.) though others underſtand this rule to extend to thoſe caſes only where another guardian, either by the election of the infant, or otherwiſe, is ready to ſucceed; and that if no other guardian be choſen or appointed ſooner, it will continue till twenty one. See *Andr.* 313. But though the heir at the age of fourteen may chooſe his own guardian, (who ſhall continue till twenty-one) and thus diſplace the guardian in ſoccage, yet both guardians will be of the ſame nature, and have the ſame office and employment aſſigned to them by the law without any intervention or direction of the infant himſelf; "for they were therefore appointed becauſe the infant in regard of his minority was ſuppoſed incapable of managing himſelf and his eſtate, and conſequently they derive their authority not from the infant but from the law." 3 *Bac. Abr.* 8vo. 403. GUARDIANS.

Guardianſhip in ſoccage, however, both as to the perſon and lands of the infant, may determine by the appointment of

4. Guardians by *ſtatute*, or as they are uſually ſtiled, *teſtamentary guardians*. The power of a father to appoint a guardian to his children, firſt aroſe on the conſtruction of ſtat. 4 and 5. *Phil.* and *Mar. c.* 8. by which he was allowed the privilege of aſſigning a guardian, either by deed or *will*, to any *woman child* under the age of ſixteen; but by a later ſtat. 12 *Car.* 2. *c.* 24. it is expreſsly enacted, that in caſe any perſon ſhall at the time of his death, have any child or children under the age of twenty-one years, and unmarried, it ſhall be lawful for the father of ſuch child or children, (whether ſuch child or children be born or be *in ventre ſa mere*, or whether ſuch father be of full age or not) by deed executed in his life time, or by his *laſt will*, executed in the preſence of *two or more* credible witneſſes, to diſpoſe of the cuſtody and tuition of ſuch child or children, in ſuch manner as he ſhall think fit, during ſuch time as ſuch child or children reſpectively ſhall continue under the age of twenty-one years, (or any leſs time) to any perſon or perſons in poſſeſſion or remainder, that he ſhall think proper, (other than popiſh recuſants) who ſhall have action againſt perſons who ſhall wrongfully take away ſuch child or children, and recover damages for ſuch child and childrens uſe. And the perſon or perſons to whom the cuſtody of ſuch child or children ſhall be committed, ſhall Guardians by ſtatute or teſtamentary guardians.

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and may take for the uſe of ſuch child or children, the profits of all lands, tenements, and hereditaments of ſuch child or children; and alſo have the cuſtody, tuition, and management of the goods, chattels, and perſonal eſtate of ſuch child or children, till the age of twenty-one years, or leſs time as aforeſaid, and bring actions relative thereto.

Conſtruction of 12 Car. 2. c. 24.

Upon which ſtatute the following obſervations occur:

That as the ſtatute gives this power to the *father* only of children, it cannot be exerciſed by any other of their relations, not even by their mother. See *Vaugh.* 180. 3 *Atk.* 519. nor is ſuch guardianſhip aſſignable by the guardian to any other perſon. *Vaugh.* 179. 2 *Atk.* 15. nor does it on his death go to his executors or adminiſtrators; but if two or more guardians are appointed, and one of them die, the ſurvivor of them alone ſhall be the infant's guardian.

That this power of appointing a guardian does not extend to copyholders, at leaſt ſo far as relates to any power a guardian has over the copyhold eſtates of the infant, on account of the prejudice that might occur to the lord of the manor; and therefore the lord of the manor, or other perſon entitled by the cuſtom, will be the infant's guardian. 3 *Bac. Abr.* 408. and *Poſt.* 80.

That *natural* children are not within the ſtatute of *Car.* 2. but yet as they are held to be within that of *Phil.* and *Mar.* (*Stra.* 1162.) and are equally in juſtice entitled to their parents attention, the court of chancery is accuſtomed to adopt the nomination of the reputed father, where the perſon ſo appointed appears to be unobjectionable. See *Brow. Ch. Ca.* 583.

That a guardianſhip appointed by deed in purſuance of the ſtatute may be revoked by the teſtator's *will* to that effect, *Rep. Temp. Finch.* 323. unleſs indeed the father has covenanted in ſuch deed, that he will not revoke it. 1 *Vez.* 442.

That as the appointment of a guardian takes effect ſolely by act of parliament, the *temporal courts* are the proper judges of the validity of ſuch appointment; and that, therefore, a will made ſolely for the purpoſe of appointing a guardian need not be proved in the eccleſiaſtical court. 1 *Ventr.* 207.

That as the ſtatute does not preſcribe any particular mode of appointment, (except that the appointing inſtrument ſhall be executed in the preſence of two witneſſes)

any form of words by which the father's intention be clearly expreſſed, will be a good appointment. *Swinb. part* 3. *c.* 12.

That a guardianſhip appointed by the father, does not determine till twenty-one, (if directed by him to continue till that period) even upon the marriage of the infant, the ſtatute expreſsly ſaying *till twenty-one*. 3 *Atk.* 625.

That if no time be mentioned by the father, it ſeems the guardianſhip will end when the infant, whether male or female, attains the age of fourteen, if under that age at the father's death, that being the rule in regard to guardians in ſoccage by the common law; but if above fourteen, the appointment will be void for uncertainty. See *Co. Lit.* 88. *b* (*n.* 13.) *Vaugh.* 184.

That the power of a guardian extends not only to the cuſtody of the infant's perſon, and of lands, &c. left him by his father, but alſo of all lands and goods of the infant, though acquired by the infant himſelf, which the guardian in ſoccage has not, *Vaugh.* 186. but he cannot like guardian in foccage, convey the ſame, even by granting a leaſe for years thereof. 2 *Wilſ.* 129. 135.

That teſtamentary guardians are within the controlling power of the court of chancery, which will prevent their prejudicing the infant's eſtate; and appoint others in caſe of lunacy, death, &c. See 2 *Fonb. Eq.* 239. *n.* (*b*) 3 *Bac. Abr.* 407. 410. and the caſes there cited.

That though the ſtatute ſpeaks only of remedies *for* the guardian, yet the infant has the ſame remedy *againſt* his teſtamentary guardian as he had againſt guardian by ſoccage.

See farther as to teſtamentary guardians, *Bedle* and *Conſtable*, *Vaugh.* 177. and Lord *Shaftſbury's Caſe*, 2 *Peere. Wms.* 102, where the nature of this kind of guardianſhip is particularly diſcuſſed.

Guardian by cuſtom.

5. Guardians by cuſtom. By the cuſtom of *London*, the cuſtody and guardianſhip of the perſon and goods of orphans under age, and unmarried, belongs to the city, and is appointed by the court of orphans there; and the executors or adminiſtrators of perſons having the freedom of that city, are therefore required to bind themſelves to the chamberlain, to account for the goods and chattels of ſuch children; and accordingly to deliver an inventory thereof upon oath. And the children of freemen (or freewomen) will be ſubject to the cuſtom, though born out

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of London. Upon which ſubject ſee further particulars, 2 *Bac. Abr.* 8vo. 248.

By the cuſtom of Kent, likewiſe, the lords of manors, upon the deaths of their tenants, have the privilege of committing the guardianſhip of the infant heir to the next of kin; but the cuſtom is now little, if at all uſed, on account of the hazard with which it is always attended to the lord, who is bound to anſwer for the due accounting of the guardian appointed by his authority. *Ibid.*

By the cuſtom of ſome manors, the lord has alſo the power of appointing guardians to the perſon and lands of copyholders under fourteen; but if no ſuch cuſtom prevails, the ſame perſon ſhall be guardian, as would be guardian of ſoccage lands by the common law, of which ſee *ante*, *p.* 75. But it is to be obſerved, that the power given to *parents* to appoint guardians to their children, by 12 *Car.* 2. does not extend to copyhold eſtates. 2 *Lutw.* 1181. 3 *Lev.* 395. *Comb.* 253. and *ante*, p. 78.

Guardian by choice of the infant.

6. One of the ſpecies of guardians we have mentioned, is that by the election of the infant himſelf; but the right in an infant to make this choice, ariſes only when he finds himſelf from a defect of the law wholly unprovided with a guardian. This may happen to be the caſe either before fourteen, when the infant has no ſuch property as attracts a guardianſhip by tenure, and his father has neglected to exerciſe his power of appointing a guardian, and there is no other; or after fourteen, when the cuſtody of the guardian by *ſoccage* terminates, and there is no one ready to ſucceed to the truſt. See *Co. Lit.* 89. *a. n.* 16. The form of this election appears to be immaterial, and it is ſometimes made before one of the judges, though it ſhould ſeem better as well on account of teſtifying greater conſiderateneſs as for the better identifying and manifeſting the perſon of the guardian, that it ſhould be made in writing, under the infant's hand and ſeal.

Theſe are all the ſpecies of guardians which it ſeems of any utility for us to notice; thoſe appointed by the courts of chancery, and the eccleſiaſtical court, in particular caſes; and the courts of juſtice, where an infant is party to a ſuit, and ſolicits for a guardian to promote and defend it; being beyond the limits of the preſent treatiſe. Some obſervations on the nature and appointment of ſuch guardians may however be found by thoſe who wiſh for information concerning them in Mr. *Hargrave's Annot. Co. Lit.* 89. *a. n.* 16. 3 *Bac. Abr.* 8vo. 410.

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II. *Of the Authority of a Guardian in reſpect to the Perſon and Property of his Ward.*

The ſame policy by which the law has appointed guardians of infants, has inveſted them with ſuch an authority and intereſt over their property as may be conducive to the infant's benefit.

A guardian in *ſoccage* may therefore make leaſes for years of the infant's eſtate during his minority; and even if ſuch leaſes extend beyond the term of his minority, they are not abſolutely void by his attaining his full age, but only voidable by him at his option: if therefore, he accept rent of the leſſee, or do any other act, ſhewing his acquieſcence in the leaſe, it will become valid and unavoidable. *Lit. ſ.* 123, 124. *Co. Lit.* 88, 89. *Cro. Jac.* 55. 98.

And the like may be ſaid of all other lawful acts done by the guardian during the infant's minority, they not being derived ſolely out of the *intereſt* of the guardian, but take effect by virtue of his *authority* likewiſe, which, for the time, is general and abſolute: for which reaſon all lawful acts done during the continuance of that authority, are good, and may ſubſiſt after the authority by which they were done has determined. (*a*) *Ibid.* and 3 *Bac. Abr.* 414.

And as they derive their authority from the *law*, and not from the infant, they may, and uſually do, tranſact all the affairs of the infant in their own name, and not in the name of the infant, as they would be obliged to do were their authority derived from him. *Vaugh.* 18.

But this does not hold in reſpect of *teſtamentary* guardians, for the authority of theſe is not derived from the *law*, but the will of the teſtator; they therefore have no

(*a*) But if a woman guardian in ſoccage, marries, and her huſband and ſhe join in a leaſe of the infant's lands, this leaſe will be void on her huſband's death; for the intereſt ſhe had in the lands being in right of the *infant*, ſhe will not be bound as ſhe ſhall by thoſe acts in which ſhe joins with her huſband in parting with her *own* poſſeſſions. *Plow.* 293.

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other power over the infant's eſtate, than to preſerve it in ſafe cuſtody, unleſs the teſtator has expreſsly given them greater powers. 2 *Wilſ.* 125. 139.

Nor can a guardian for *nurture* make leaſes for years of the infant's eſtate, either in his own name or the infant's; for he has only the care of the perſon and education of the infant, and nothing to do with his eſtate. 3 *Bac. Abr.* 414.

A guardian in ſoccage may likewiſe (where the cuſtom of the manor allows of ſuch guardian) grant copyhold eſtates of the infant, and ſuch grants ſhall blnd the heir; and he may alſo hold courts, and all in his own name, for he is for the time, complete lord, as the infant would have been if of age; only that he is bound to account for the profits. *Cro. Jac.* 55. 99. *Poph.* 127. *Owen.* 115. *Godb.* 145. and it has alſo been reſolved, that he may grant copyholds in reverſion, (according to the cuſtom of the manor) and ſuch grants will be good though they come into poſſeſſion during the nonage of the infant, 3 *Bac. Abr.* 415.

He may alſo make partition in behalf of an infant, and if equal, it will bind him. 2 *Roll. Abr.* 256.

This authority and intereſt of a guardian, it is however to be remembered, are confined to ſuch acts as are apparently for the infant's benefit; the advantage of the infant being the very reaſon and groundwork of the appointment of a guardian.

A guardian cannot therefore (unleſs it be manifeſtly for the ward's benefit) change the nature of the infant's eſtate. *Amb.* 370. As where the guardian or committee of a lunatic inveſted part of the lunatic's perſonal property in the purchaſe of real eſtates, it was holden that he had exceeded his power by endeavouring to defeat the next of kin in favour of the heirs at law. 2 *Vern.* 192, 193.

And where a guardian, out of the rents and profits of the infant's eſtate paid off bond debts, and the infant died, the guardian (who was mother and adminiſtratrix of the infant) was not allowed to recover the money of the heir. ſhe not having been obliged to pay off thoſe debts. *Ibid.* 606.

But where an eſtate deſcends to an infant, ſubject to incumbrances, the guardian may, and ought to apply the profits to keep down the intereſt. 2 *Peer Wms.* 278. as he may alſo to pay off a mortgage-judgment, or any other direct and immediate charge upon the land. 1 *Abr. Eq.*

261. 2 *Chan. Ca.* 197. 1 *Vern.* 436. but no other real incumbrance. 1 *Abr. Eq.* 261. GUARDIANS.

A guardian has nothing to do with any concerns of an infant, of which he cannot give an account, therefore he cannot present to a benefice in right of the heir, for he cannot make a profit of it to bring to account; and it is also settled, that an infant of any age, may himself present to a benefice. 2 *Eq. Ca. Abr.* 518. "but though there is no doubt about the legal right of an infant of the most tender age to present, it still remains to be seen whether the want of discretion would induce a court of equity to controul the exercise where a presentation is obtained from the infant without the concurrence of the guardian." *Co. Lit.* 8vo. 89. *a. n.* 1.

Nor shall the answer of a guardian to a bill in equity conclude an infant, nor be read against him in evidence, the effect of an infant's answer being only to make proper parties, and afford an opportunity of taking depositions. (*a*) 1 *Peer Wms.* 504. 2 *Ibid.* 387. 401. 3 *Ibid.* 237.

But an infant may appear by guardian, and suffer a recovery, and it will bind him; for if it be to his prejudice he may have his remedy against his guardian for the injury he may have sustained by it. *Roll. Abr.* 731.

It may be here also proper to remark, that courts of equity are extremely jealous of any transaction entered into between guardians and wards, lest the guardian should exercise any undue advantages over his ward; they will not therefore give validity to any contract between them, unless the terms are indubitably fair and equal, nor even allow any gift or release from a ward to his guardian on his coming of age. 1 *P. Wms.* 118. 2 *Vez.* 547.

III. *Of the Remedy a Ward has against his Guardian for abuse of trust.*

By the common law, and also the stat. *Westm.* 2. remedies are provided for infants against their guardians on account of waste done to their estates, by or through the

(*a*) But it is otherwise if a superannuated defendant put in his answer by guardian, for he is supposed to get worse and worse, and should not therefore have a day to shew cause. 1 *Abr. Ca. Eq.* 281.

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permiſſion of their guardians. See that ſtat. *c.* 5. *ſ.* 23. *Co. Lit.* 87. 2 *Inſt.* 305. But the moſt uſual mode of redreſs in all caſes, is by application to the court of chancery, to which the power of inveſtigating and controuling the appointment and acts of guardians is now, from whatever origin, univerſally admitted to belong; "hence it is every day's practice we find for the court to determine as to the right of guardianſhip; who is the next of kin, and who the proper guardian; to make orders on petition or motion for the proviſion of infants during any diſpute in thoſe points; to remove guardians, or compel them to give ſecurity; and to prevent their committing, and to puniſh them for abuſes committed upon the perſon or property of their wards; all ſuch wrongs and injuries being reckoned a contempt of that court, which has by an eſtabliſhed juriſdiction the protection of all perſons under natural diſabilities." 3 *Bac. Abr.* 8vo. 410. and ſee 2 *Chan. Ca.* 237. 1 *Vez.* 160. 1 *P. Wms.* 702. 2 *Ibid.* 110. (*note*,) 117. 561. *Amb.* 302. 2 *Brow. Ch. Ca.* 499. 4 *Ibid.* 101.

And this application may be made by the infant himſelf upon his attaining his age of twenty-one, or by his *prochein amy*, or next friend, during his minority. 2 *Vern.* 342. 1 *P. Wms.* 119. 3 *Atk.* 625. and this court will even in ſome caſes permit a ſtranger to the infant to come in and complain of the guardian's abuſe of the infant's eſtate. See 2 *Vez.* 484.

But when made to account by the infant, or others, he ſhall not be anſwerable for any loſs which may happen to the infant's eſtate, other than by his wilful default or negligence; for he acts in the nature of a ſteward or bailiff for the infant, and undertakes only for his diligence and fidelity. See *Co. Lit.* 80. *a.* 8 *Co.* 84. And he ſhall likewiſe have all reaſonable expences allowed him in the execution of his truſt. *Ibid.*

And a guardian being thus bound to give an account to his ward, when he comes of age, of all that he has tranſacted on his behalf, and being anſwerable for all loſſes by his wilful default or negligence, "it has now become a practice (to prevent diſagreeable conteſts with young gentlemen) for many guardians, of large fortunes eſpecially, to indemnify themſelves, by applying to the court of chancery in the firſt inſtance, acting under its direction, and accounting annually before the officers of that court." See 1 *Blac. Com.* 463.

ABSTRACT

Of 36 Geo. III. Cap. 52. for repealing certain duties on legacies and ſhares of perſonal eſtates, and for granting other duties thereon, in certain caſes.

SECTION I. repeals the duties impoſed by the acts of the 20th, 23d, and 29th Geo. 3. upon paper, &c. on which any receipt, or any other diſcharge for any legacy, or ſhare of perſonal eſtate, ſhall be written, &c. as to ſuch receipts or diſcharges for which new duties ſhall be granted by this act.

Statutes 20 *Geo.* III, cap. 28, 23 *Geo.* III, cap. 58. & 29 *Geo.* III, cap. 51, repealed.

II. Upon every legacy, whether *ſpecific* or *pecuniary*, or of any *other deſcription*, of the amount or value of 20l. or more, given by any will or teſtamentary inſtrument of any perſon who ſhall die after the paſſing of this act, out of the *perſonal eſtate* of the perſon ſo dying, and alſo upon the clear reſidue of the perſonal eſtate of every perſon who ſhall ſo die, whether teſtate or inteſtate, and leave perſonal eſtate of the clear value of *one hundred pounds* after deducting debts, funeral expences, and other charges, and ſpecific and pecuniary legacies, (if any) whether the title to ſuch reſidue, or to any part thereof, ſhall accrue by virtue of any teſtamentary diſpoſition, or upon inteſtacy, there ſhall be paid the ſeveral duties, after the rates and in manner following:

New duties impoſed.

Where the legacy or reſidue, or part of the reſidue, ſhall be given or ſhall paſs to or for the benefit of a *brother* or *ſiſter* of the *deceaſed*, or any deſcendant of a brother or ſiſter, there ſhall be charged a duty of *two pounds* for every *one hundred pounds* of the value of ſuch legacy, or reſidue or part of reſidue, and ſo after the ſame rate for any greater or leſs ſum.

Where the legacy, &c. ſhall be given or paſs to or for the benefit of a *brother* or *ſiſter* of a *father* or *mother* of the deceaſed, or any deſcendant of ſuch brother or ſiſter, there ſhall be charged *three* pounds for *every one hundred* pounds in value, and ſo after the ſame rate for any greater or leſs ſum:

Where ſuch legacy, &c. ſhall be given, or ſhall paſs to or for the benefit of a *brother* or *ſiſter* of a *grandfather* or *grandmother* of the deceaſed, or any deſcendant of ſuch brother or ſiſter, *four pounds* for every *one hundred* pounds of the value of ſuch legacy.

And where any ſuch legacy, &c. ſhall be given or ſhall paſs to or for the benefit of any perſon in any *other degree* of *col-*

lateral conſanguinity to the deceaſed than is herein-before deſcribed, *or any ſtranger in blood* to the deceaſed, there ſhall be charged a duty of *ſix pounds* for every *one hundred pounds* of the value of ſuch legacy, &c. and ſo after the ſame rate for any greater or leſs ſum;

Duties not to extend to the huſbands or wives of the deceaſed.

Provided, that nothing herein contained ſhall extend to charge with any duty any legacy, or any reſidue or part of reſidue, of any perſonal eſtate, which ſhall be given or paſs to or for the benefit of the *huſband* or *wife* of the deceaſed, or to or for the benefit of any of the *royal family*.

Duties to be under management of commiſſioners for Stamps.

III. The ſaid duties ſhall be under the care, management, and direction of the commiſſioners for the time being appointed to manage the duties on ſtamped vellum, parchment, and paper.

IV. The ſaid commiſſioners ſhall, by writing under their hands and ſeals, appoint receivers of the duties, and keep accounts, ſhewing the perſonal eſtates in reſpect of which the duties have been paid.

V. Commiſſioners may provide printed receipts, which may be uſed, or others of the like forms.

Duties to be paid by executors or adminiſtrators on retaining or paying legacies.

VI. Theſe duties, wherever it is not hereby otherwiſe provided, ſhall be accounted for, anſwered and paid, by the perſon or perſons, having or taking the burthen of the execution of the will or other teſtamentary inſtrument, or the adminiſtration of the perſonal eſtate of any perſon deceaſed, upon retainer for his, her, or their own benefit, or for the benefit of any other perſon or perſons, of any legacy, &c. or part thereof, which he, ſhe, or they ſhall be entitled to retain, either in their own right, or in the right or for the benefit of any other: and alſo upon delivery, payment or other ſatisfaction or diſcharge whatſoever, of any legacy, &c. or part thereof; and in caſe any perſon or perſons, having or taking the burthen of ſuch execution or adminiſtration as aforeſaid, ſhall retain, for their own benefit, or for the benefit of any other, any legacy, &c. or part thereof, upon which any duty ſhall be chargeable by virtue of this act, not having firſt paid ſuch duty; or ſhall deliver, pay, or otherwiſe howſoever ſatisfy or diſcharge any legacy, &c. or part thereof, upon which any duty ſhall be chargeable by virtue of this act, having received or deducted the duty ſo chargeable, then the duty, which ſhall be due and payable upon every ſuch legacy, &c. or part thereof, and which ſhall not have been duly paid and ſatisfied to his Majeſty, &c. ſhall be a debt of ſuch perſon or perſons having or taking the burthen of ſuch execution or adminiſtration as is aforeſaid, to his Majeſty, his heirs, and ſucceſſors; and in caſe any ſuch perſon or perſons ſo having or taking the burthen of ſuch adminiſtration or execution as aforeſaid, ſhall

If duty be not paid before legacies are retained or diſcharged by executors, they having deducted it, the ſame to be a debt from them to his Majeſty; and if they pay legacies without deducting the duty, it ſhall be a debt from both parties.

deliver, pay, or otherwiſe howſoever ſatisfy or diſcharge any ſuch legacy, &c. or part thereof, without having received or deducted the duties chargeable thereon, (ſuch duty not having firſt been duly paid to his Majeſty, &c.) then ſuch duty ſhall be a debt to his Majeſty, &c. both of the perſon or perſons, who ſhall make ſuch delivery, payment, ſatisfaction, or diſcharge, and of the perſon or perſons to whom the ſame ſhall be made.

What ſhall be deemed legacies within the intent of act.

VII. Any gift by the will or teſtamentary inſtrument of any perſon dying after the paſſing of this act, which ſhall have effect, or be ſatisfied out of the perſonal eſtate of the perſon ſo dying, or out of any perſonal eſtate which ſuch perſon ſhall have power to diſpoſe of as he or ſhe ſhall think fit, ſhall be deemed a legacy within this act, whether the ſame be given by way of annuity or in any other form, and whether the ſame ſhall be charged only on ſuch perſonal eſtate, or charged alſo on real eſtate of the teſtator or teſtatrix who ſhall give the ſame; except ſo far as the ſame ſhall be ſatisfied out of ſuch real eſtate in a due execution of the will or teſtamentary inſtrument by which the ſame ſhall be given; and every gift which ſhall have effect as a *donatio mortis cauſa*, ſhall alſo be deemed a legacy.

The value of annuities and the duty to be calculated according to the annexed tables, and the duty paid by inſtalments, &c.

VIII. The value of any legacy given by way of annuity, whether payable annually or otherwiſe, for life or lives, or years determinable on life or lives, or for years or any other time, ſhall be calculated, and the duty chargeable thereon charged, according to the ſchedule hereunto annexed; and the duty chargeable on ſuch annuity ſhall be paid by four equal payments,—the firſt payment ſhall be made before or on completing the payment of the firſt year's annuity, the three others ſimilarly on or before the completion of the payment of the three ſucceſſive years; and the value of any ſuch annuity, if determinable upon any contingency beſides the death of any perſon or perſons, ſhall be calculated without regard to ſuch contingency: *provided always*, that if any ſuch annuity ſhall determine by the death of any perſon, before four years payment of ſuch annuity ſhall become due and payable, then the duty ſhall be payable in proportion only to ſo many payments of the ſaid annuity as actually accrued and became due and payable; and in caſe any ſuch annuity ſhall at any time determine upon any other contingency than the death of any perſon or perſons, then, all payments of duty which would otherwiſe become due after the happening of ſuch contingency, if any ſuch would become due, ſhall ceaſe, and the perſon or perſons who ſhall have paid any duties which ſhall have previouſly become due, may apply for a return of ſo much of the duties ſo paid, as will reduce the ſame to the like

Proportion of duty in caſe of the death of the annuitant.

duty as would have been payable for ſuch annuity, calculated according to the term for which the ſame ſhall have endured; which abatement the commiſſioners ſhall ſettle according to the tables in the ſchedule, and ſhall cauſe the amount thereof to be paid to the perſons entitled to the ſame, out of the monies in their hands ariſing from the duties impoſed by this act.

The value of annuities payable out of legacies, and the duty, to be calculated according to the annexed tables, and the duty to be charged on the value of ſuch legacies, after deducting ſuch annuities, &c.

IX. The value of any legacy given by way of annuity for life or lives, or for years determinable on any life or lives, or for years or any other period of time, and payable, &c. out of any other legacy or legacies, ſhall be calculated, and the duty charged thereon, in the ſame manner as is hereinbefore directed as to other annuities; and the duty on the legacy charged with ſuch annuity, if any duty ſhall be payable for ſuch legacy, ſhall be calculated on the value of ſuch legacy, after deducting the value of ſuch annuity; and the duty for ſuch annuity ſhall be paid by the perſons entitled to the legacy charged with ſuch annuity, by four equal payments, in like manner as the ſame would be payable according to the proviſions herein before contained, if ſuch annuity had been a direct gift to the annuitant, and ſubject to the like proviſo in caſe ſuch annuity ſhall determine before four years payment ſhall become due; and the payment which ſhall be made for ſuch duty, ſhall be retained by the perſon or perſons paying the ſame out of the firſt four years payments of ſuch annuity, if ſo many ſhall become due, or out of ſo many payments as ſhall become due, by equal portions.

Duty on legacies given to purchaſe annuities to be calculated on the ſums neceſſary to purchaſe them.

X. The duty payable upon any legacy given to purchaſe, with the perſonal eſtate, an annuity of a certain amount for life or lives, or any other term, ſhall be calculated upon the ſum neceſſary to purchaſe ſuch annuity according to the tables before mentioned, and ſhall be deducted from ſuch ſum, and paid as in the caſe of other pecuniary legacies; and the perſons paying, &c. ſuch legacy, and the perſons for whoſe benefit it ſhall be paid, &c. ſhall be diſcharged, by payment of ſuch duty calculated as aforeſaid, from all other demands in reſpect of the duty payable on ſuch legacy; and the annuity to be purchaſed for the benefit of the perſon entitled to the benefit of ſuch legacy, ſhall be reduced in proportion to the duty payable thereon, ſuch reduction to be calculated in the ſame manner as the duty ſo payable is herein-before directed to be calculated: and the purchaſe of ſuch reduced annuity, together with the payment of ſuch duty, ſhall ſatisfy and diſcharge ſuch legacy as fully as if an annuity had been purchaſed equal in amount to the annuity ſo directed to be purchaſed.

Duty on legacies whoſe value can only be aſcer-

XI. If any benefit is given by any will or teſtamentary inſtrument, in ſuch terms that the amount can only be aſcertained from time to time, by the actual application of the fund allotted

for ſuch purpoſe, or made chargeable therewith, or if the amount or value of any benefit given by any will, &c. cannot by reaſon of the form and manner of the gift, be ſo aſcertained that the duty can be charged thereon under any other of the directions herein-before contained, then ſuch duty ſhall be charged upon the ſeveral ſums of money and effects which ſhall be applied from time to time for the purpoſes directed by ſuch will, &c. as ſeparate and diſtinct legacies, and ſhall be paid out of the fund applicable for ſuch purpoſes, or charged with anſwering the ſame.

tained by application of the allotted fund, to be charged on the money as applied.

XII. The duty payable on a legacy, or reſidue, &c. given to or for the benefit of, different perſons in ſucceſſion, who ſhall be chargeable with the duties hereby impoſed at one and the ſame rate, ſhall be charged upon and paid out of the legacy, &c. as in the caſe of a legacy to one perſon; but where perſons are entitled in ſucceſſion, ſome or one of whom ſhall be chargeable with no duty, or ſome of whom ſhall be chargeable with different rates of duty, ſo that one rate of duty cannot be immediately charged thereon, all perſons who, in conſequence of ſuch bequeſt, ſhall be entitled for life only, or other temporary intereſt, ſhall be chargeable with the duty in reſpect of ſuch bequeſt in the ſame manner as if the annual produce thereof had been given by way of annuity; and ſuch perſons ſhall be chargeable with the duty, and the ſame ſhall be payable when they ſhall reſpectively be entitled, and begin to receive ſuch produce, and ſhall be paid by equal portions during the aforeſaid term of four years, if they ſhall ſo long continue to receive ſuch produce; and where any other partial intereſt ſhall be given, or ſhall ariſe out of ſuch property ſo to be enjoyed in ſucceſſion, the duty on ſuch partial intereſt ſhall be charged and paid in the ſame manner as the duty herein-before directed to be charged and paid in like caſes of partial intereſts, charged on any property given otherwiſe than to different perſons in ſucceſſion; and whatever perſon or perſons ſhall become *abſolutely entitled* to any ſuch legacy, &c. ſo to be enjoyed in ſucceſſion, ſhall, when they receive the ſame, or begin to enjoy the benefit thereof, be chargeable with and pay the duty for the ſame, or ſuch part thereof as ſhall be ſo received, or of which the benefit ſhall be ſo enjoyed, in the ſame manner as if the ſame had come to ſuch perſons or perſons immediately on the death of the perſon by whom ſuch property ſhall have been given to be enjoyed, or in ſuch manner that the ſame ſhall be enjoyed in ſucceſſion.

How duty on legacies enjoyed by perſons in ſucceſſion, or having partial intereſts therein, ſhall be charged.

XIII. The duty payable on any legacy, reſidue, &c. ſo given to, or ſo to be enjoyed by different perſons in ſucceſſion, upon whom the duty ſhall be chargeable at one and the ſame rate,

By whom ſuch legacies to be paid.

ſhall be deducted and paid by the perſon or perſons having or taking the burthen of the execution of the will or teſtamentary inſtrument under which the title thereto ſhall ariſe, upon payment or other ſatisfaction, or diſcharge of every or any part of ſuch legacy or reſidue, or part of reſidue, to any truſtee or truſtees, or other perſon to whom the ſame ſhall be payable or paid in truſt or for the benefit of the perſons ſo entitled thereto in ſucceſſion; and if the ſame ſhall not be ſo paid or ſatisfied to any ſuch truſtee or truſtees, then ſuch duty ſhall be deducted and paid out of the capital of the property ſo given, upon receipt, by any of the perſons ſo entitled in ſucceſſion, of any produce of ſuch capital, or any part thereof, according to the amount of the capital of which ſuch produce ſhall be ſo received; and where the duty chargeable on any ſuch bequeſt for the benefit of different perſons in ſucceſſion, ſhall be chargeable at different rates, ſo that it cannot be paid at one and the ſame time, *then* all perſons undertaking the burthen of the execution of the will or teſtamentary inſtrument in which ſuch bequeſt ſhall be contained, ſhall be chargeable with ſuch duties in ſucceſſion, in the ſame manner as ſuch perſons would be chargeable with the like duties in caſe of immediate bequeſt; unleſs the property bequeathed ſhall have been paid or otherwiſe ſatisfied to or veſted in any truſtee as aforeſaid, in which caſe the truſtee or truſtees, or their repreſentatives, ſhall be chargeable with the duties for and in reſpect of ſuch property ſo veſted in him, her, or them reſpectively, in ſuch and the ſame manner as if he, her, or they had taken the burthen of the execution of the will, by which ſuch bequeſt ſhall have been made; and in like manner, where any partial intereſt ſhall be given, or ariſe out of any ſuch property ſo to be enjoyed in ſucceſſion, and ſuch partial intereſt ſhall be ſatisfied or paid by the perſon or perſons ſo enjoying ſuch property, ſuch perſon or perſons ſhall be chargeable with the duties for and in reſpect of ſuch partial intereſt, and ſhall retain and pay the ſame in ſuch and the ſame manner as if he, ſhe, or they had taken the burthen of the execution of the will, by which ſuch partial intereſt ſhall have been created; and in all ſuch caſes the perſon or perſons ſo chargeable with duty, ſhall be debtors to the king, in like manner, and ſhall be ſubject to the like penalties, as the perſon or perſons having or taking the burthen of the execution of ſuch will, are hereby made chargeable.

Plate, &c. while enjoyed in kind, not liable to duty till in poſſeſſion of perſons having power to diſpoſe thereof.

XIV. No duty ſhall be paid on any articles of plate, furniture, or other things not yielding any income, and given to be enjoyed in ſucceſſion, whilſt the ſame ſhall be enjoyed in kind only by any perſons not having any power of ſelling or diſpoſing thereof, ſo as to convert the ſame into money or other property yielding income; but if the ſame ſhall be actually ſold or diſ-

poſed of, or ſhall come to any perſon having power to ſell or diſpoſe thereof, or having an abſolute intereſt therein, then the ſame duty ſhall be chargeable and paid thereon as if the ſame had originally been given abſolutely, and ſhall be chargeable upon and paid by the perſon for whoſe benefit the ſame ſhall be ſold, or who ſhall have power to ſell, or an abſolute intereſt therein, and ſhall become the debt of ſuch perſon; but ſhall not be a charge on any perſon or perſons by reaſon of their having aſſented to ſuch bequeſt, as the perſon or perſons having or taking the burthen of the execution of the will by which ſuch bequeſt ſhall have been made.

Duty on legacies enjoyed in ſucceſſion to be charged as ſuch, whether taken under wills or by inteſtacy.

XV. Where any legacy or reſidue ſhall be ſo given by any will, that different perſons ſhall become entitled thereto in ſucceſſion, the duty ſhall be charged thereon as given to be enjoyed in ſucceſſion, whether the perſon or perſons entitled thereto ſhall take the ſame under or by virtue of ſuch will, and the diſpoſitions therein contained, or in default of ſuch diſpoſitions, and as entitled by inteſtacy.

Duty on legacies in joint tenancy to be paid in proportion to the intereſt of the parties.

XVI. Where any legacy, or reſidue or part of reſidue, ſhall be given to or for the benefit of any perſons in joint tenancy, ſome or one of whom ſhall be chargeable with any duty hereby impoſed, and ſome or one of whom ſhall not be ſo chargeable, the perſon or perſons chargeable with duty ſhall pay ſuch duty in proportion to the intereſt of ſuch perſon or perſons reſpectively in ſuch bequeſt; and if any perſon or perſons chargeable with duty, and entitled in joint tenancy as aforeſaid, ſhall become entitled by ſurvivorſhip, or by ſeverance of the joint tenancy, or any larger intereſt in the property bequeathed, than that in reſpect of which ſuch duty ſhall have been paid, then ſuch perſon or perſons ſo becoming entitled by ſurvivorſhip, or ſeverance, ſhall be charged with the ſame duty as if the property to which ſuch joint tenant or tenants ſhall ſo become entitled had been originally given to or for the benefit of ſuch perſon or perſons only.

Duty on legacies ſubject to contingencies, to be charged as for abſolute bequeſts, &c.

XVII. Where the legacy, &c. ſhall be given, ſubject to any contingency which may defeat the gift, whereupon the ſame may go over to ſome other perſon or perſons, ſuch bequeſt, (unleſs chargeable as an annuity under the proviſions herein contained) ſhall be charged with duty as an abſolute bequeſt, to the perſon or perſons taking it ſubject to ſuch contingency, ſuch duty to be paid out of the capital of the legacy, notwithſtanding, on ſuch contingency, it may go to ſome perſon not chargeable with any duty; and if on the contingency after happening, the bequeſt goes in ſuch manner that the ſame, if taken immediately after the death of the teſtator under the ſame title, would have been chargeable with a higher rate of duty than the duty ſo paid, the perſon or perſons ſo

becoming entitled thereto, ſhall pay the difference between the duty ſo paid, and ſuch higher rate of duty.

How duty on legacies ſubjected to power of appointment ſhall be charged.

XVIII. And be it further enacted, that where any legacy, or the reſidue or any part of the reſidue, of any perſonal eſtate, ſhall be ſubjected to any power of appointment to or for the benefit of any perſon or perſons ſpecially named or deſcribed as objects of ſuch power, ſuch property ſhall be charged with duty as property given to different perſons in ſucceſſion; and in ſo charging ſuch duty, not only the perſon and perſons who ſhall take previous or ſubject to ſuch power of appointment, but alſo any perſon and perſons who ſhall take under or in default of any ſuch appointment, when and as they ſhall ſo take reſpectively, ſhall, in reſpect of their ſeveral intereſts, whether previous, or ſubject to, or under, or in default of ſuch appointment, be charged with the ſame duty, and in the ſame manner, as if the ſame intereſts had been given to him, her, or them reſpectively, in and by the will or teſtamentary diſpoſition containing ſuch power, in the ſame order and courſe of ſucceſſion as ſhall take place under and by virtue of ſuch power of appointment, or in default of execution thereof, as the caſe may happen to be; and where any property ſhall be given for any limited intereſt, and a general and abſolute power of appointment ſhall alſo be given to any perſon or perſons to whom the property would not belong in default of ſuch appointment, ſuch property, upon the execution of ſuch power, ſhall be charged with the ſame duty, and in the ſame manner, as if the ſame property had been immediately given to the perſon or perſons having and executing ſuch power, after allowing any duty before paid in reſpect thereof; and where any property ſhall be given with any ſuch general power of appointment, which property in default of appointment will belong to the perſon or perſons to whom ſuch power ſhall be given, ſuch property ſhall be charged with the duty, in the ſame manner as if ſuch property had been given to ſuch perſon or perſons abſolutely in the firſt inſtance, without ſuch power of appointment.

How duty to be paid on legacies of perſonal eſtates to be applied in purchaſe of real eſtates.

XIX. Any ſum of money, or perſonal eſtate, directed to be applied in purchaſe of real eſtate, ſhall be charged with duty as perſonal eſtate, unleſs the ſame ſhall be ſo given as to be enjoyed by different perſons in ſucceſſion, and then each perſon entitled thereto in ſucceſſion ſhall pay duty for the ſame in like manner as if the ſame had not been directed to be applied in the purchaſe of real eſtate; unleſs the ſame ſhall have been actually applied in the purchaſe of real eſtate before ſuch duty accrued; but no duty ſhall accrue in reſpect thereof, after the ſame ſhall have been actually applied to the purchaſe of real eſtate, for ſo much thereof as ſhall have been ſo applied: pro-

vided, that in caſe before the ſame or ſome part thereof ſhall be actually ſo applied, any perſon or perſons ſhall become entitled to an eſtate of inheritance in poſſeſſion in the real eſtate to be purchaſed therewith, or with ſo much thereof as ſhall not have been applied in the purchaſe of real eſtate, the ſame duty which ought to be paid by ſuch perſon or perſons, if abſolutely entitled thereto as perſonal eſtate by virtue of any bequeſt thereof as ſuch, ſhall be charged on ſuch perſon or perſons, and paid out of the fund remaining to be applied in ſuch purchaſe.

Eſtates *pur autre vie.*

XX. Eſtates *pur autre vie*, applicable by law in the ſame manner as perſonal eſtates, ſhall be charged with the duties hereby impoſed as perſonal eſtates.

Money left to pay duty not chargeable as a legacy.

XXI. If any direction is given in a will for payment of the duty chargeable upon any legacy out of ſome other fund, ſo that the legacy may paſs to the perſon or perſons to whom or for whoſe benefit the ſame ſhall be given free of duty, no duty ſhall be chargeable upon the money to be applied for payment of ſuch duty, though the ſame may be deemed a legacy for the benefit of the perſon or perſons who would otherwiſe pay ſuch duty.

Mode of aſcertaining duty on property not reduced into money.

XXII. In caſe of ſpecific legacies, and where the reſidue of any perſonal eſtate ſhall conſiſt of property not reduced into money, the perſon or perſons taking the burthen of adminiſtration of ſuch effects, or the perſon or perſons by whom the duty thereon ought to be paid, may ſet a value thereon, and offer to pay the duty according to that value; or require the commiſſioners for management of the ſtamp duties to appoint a perſon to ſet ſuch value, at the expence of the perſon or perſons by whom ſuch duty ought to be paid; and the commiſſioners, if they think fit, may acquieſce in the valuation made by the perſon or perſons taking adminiſtration, &c. or by whom the duty ought to be paid, without ſuch appraiſement; but if the commiſſioners are not ſatisfied with the value ſo ſet, on which the duty ſhall be ſo offered, they may, notwithſtanding ſuch offer, appoint a perſon to appraiſe ſuch effects, and ſet the value thereon, on which value the commiſſioners ſhall aſſeſs the duty; but if the perſon or perſons by whom ſuch duty ſhall be payable, ſhall not be ſatisfied with the valuation made under the authority of the commiſſioners, ſuch perſon or perſons may cauſe ſuch valuation to be reviewed by the commiſſioners of the land tax for the time being, of the diſtrict or place where ſuch effects ſhall be, at their next meeting, after the ſaid commiſſioners for management of the ſtamp duties ſhall have aſſeſſed and required payment of ſuch duty as aforeſaid, if fourteen days ſhall have elapſed between ſuch time and the meeting of the ſaid commiſſioners of land tax, and if

Property not reduced into money.

not, then at the next ſucceeding meeting of the commiſſioners, of which appeal ſix days notice ſhall be given to the ſaid commiſſioners of ſtamp duties; and the ſaid commiſſioners of land tax may, if they think fit, appoint a perſon to appraiſe ſuch effects, and ſet a value thereon, and may hear and determine ſuch appeal, in the ſame manner as in any other appeal to them, and with the like authorities, and their judgment ſhall be final; and if the valuation made under the authority of the ſaid commiſſioners of the ſtamp duties in the caſe laſt-mentioned, ſhall not be duly appealed from within the time aforeſaid, or ſhall be affirmed upon appeal, the duty ſhall be paid according to ſuch valuation; and if any variation ſhall be made on ſuch appeal, the duty ſhall be paid according to ſuch variation; and if the duty aſſeſſed in manner aforeſaid, ſhall exceed the duty offered to and refuſed by the ſaid commiſſioners of ſtamp duties, the expence of ſuch appraiſement and other proceedings in aſſeſſing ſuch duty, ſhall be borne by the perſon or perſons by whom ſuch duty ſhall be payable; and if any diſpute ſhall ariſe between any perſon or perſons entitled to any ſuch legacy, or reſidue, or part of reſidue, and any perſon having or taking the burthen of the adminiſtration of ſuch effects, with reſpect to the value thereof, or the duty to be paid thereon, the duty ſhall be aſſeſſed by the ſaid commiſſioners of the ſtamps on reference to them by either party for that purpoſe; and if the value of any property on which ſuch duty ought to be paid be in diſpute, the commiſſioners of ſtamp duty ſhall cauſe an appraiſement to be made thereof, at the expence of the perſon or perſons by whom ſuch duty ought to be paid, in the manner herein-before directed in other caſes, and aſſeſs the duty thereon accordingly: If ſuch valuation, or the aſſeſſment of duty made thereon, is diſſatisfactory to ſuch perſon or perſons by whom the duty is to be paid, the ſame ſhall be reviewed and finally determined on by the commiſſioners of land tax, upon appeal to them within the time, and under the reſtrictions, and in the manner herein-before directed in other caſes. If ſuch valuation or aſſeſſment ſhall not be duly appealed from, or ſhall be affirmed on appeal, the duty ſhall be paid according thereto; and if any variation ſhall be made therein on ſuch appeal, the duty ſhall be made acc rding to ſuch variation; and in caſe the effects whereon any ſuch duty ſhall be payable ſhall be at the diſtance of ten miles from *London*, then it ſhall be lawful to make the like application to ſuch perſons as ſhall be deputed for that purpoſe by the ſaid commiſſioners to act in their ſtead in ſuch caſes, within the county or diſtrict in which ſuch effects ſhall be; and ſuch perſon ſo deputed ſhall act in all reſpects, as the ſaid commiſſioners are hereby authoriſed to act, ſubject nevertheleſs to the inſtructions and controul of the ſaid commiſſioners.

Duty on legacies not satisfied in money, &c. to be paid according to the value of the satisfaction.

XXIII. When any legacy, &c. or part thereof, whereon any duty shall be chargeable by this act, shall be satisfied otherwise than by payment of money or application of specific effects for that purpose, or shall be released for consideration, or compounded for less than the value thereof, then the duty shall be charged according to the amount or value of the property taken in satisfaction thereof, or of the consideration for the release thereof, or composition for the same: provided always, if any legacy or bequest shall be made in satisfaction of any other legacy, &c. remaining unpaid, the duty shall not be paid on both subjects, although both may be chargeable with duty, but shall be paid on the subject yielding the largest duty.

If legatees refuse to accept legacies, duty deducted, the court, in case of suit, may order them to pay costs.

XXIV. If executors or administrators, or other persons made chargeable with duty, shall offer to pay any pecuniary legacy, &c. deducting the duty payable thereon, or offer to deliver or otherwise dispose of any specific legacy, or property, to or for the benefit of the person or persons entitled thereto, or to any trustee, &c. for them, upon payment of the duty payable in respect thereof, and the person or persons entitled to such legacy, &c. or their trustee, &c. shall refuse to accept such offer, and to give a proper release and discharge for such legacy, &c. then, although no actual tender shall be made, if any suit shall be afterwards instituted for such legacy or effects, the court in which such suit shall be instituted, may order all costs, &c. to be paid by the person or persons who shall have refused to accept such offer.

XXV. If suit be instituted concerning administration, the court to provide for payment of the duty.

Executors may discharge legacies on payment of the duty accrued.

XXVI. Provided always, that any person or persons taking the burthen of execution of any will, &c. or administration, may from time to time pay, deliver, or make distribution of any part of any legacy, &c. on payment, from time to time, of such proportions of the duty hereby imposed, as shall accrue in respect of such part of such personal estate as shall be so administered.

No legacy, liable to duty, to be paid without a receipt, containing certain particulars.

XXVII. No person or persons taking the burthen of the execution of any will or testamentary disposition, or the administration of the personal estate, nor any trustee or trustees, or any other person or persons hereby required to account for any duty, shall, after the passing of this act, pay, deliver, or otherwise dispose of, or in any manner discharge, satisfy, or compound for, any legacy, &c. or any part thereof, in respect whereof any duty is hereby imposed, without taking a receipt or discharge in writing for the same, expressing the date of the receipt or discharge, and the names of the testator, testatrix, or intestate, under whose will or intestacy the title to such le-

gacy or part of legacy, &c. ſhall accrue, and of the perſon or perſons to whom ſuch receipt or diſcharge ſhall be given, and of the perſon or perſons to whom ſuch legacy, &c. ſhall belong in caſe of inteſtacy, and the amount or value of the legacy, &c. or part thereof for which ſuch receipt ſhall be given, and alſo the amount and rate of the duty payable and allowed thereon; and no written receipt or diſcharge for any legacy, &c. or any part thereof, in reſpect whereof any duty is hereby impoſed, ſhall be received in evidence, or be available in any manner whatever, unleſs the ſame ſhall be ſtamped, as required by this act; and no evidence whatever ſhall be given of any payment, ſatisfaction, or diſcharge whatever, or of any releaſe or compoſition of ſuch legacy, &c. or any part thereof, without producing ſuch receipt or diſcharge, duly ſtamped as aforeſaid, unleſs the actual payment of the duty hereby impoſed, ſhall firſt be given in evidence: provided always, that a copy of the entry, in the books of the commiſſioners of ſtamps, of the payment of ſuch duty, ſhall be admitted as evidence thereof: provided alſo, that payment of any annuity ſhall not be deemed a payment for which ſuch ſtamped receipts ſhall be required, except the ſeveral payments which ſhall complete the payments for each of the firſt four years during which ſuch annuity ſhall be payable; and in like manner in reſpect of any legacy or bequeſt, hereby directed to be charged with duty in the ſame manner as annuities, ſhall not be deemed a payment for which ſuch ſtamped receipt ſhall be required, except the ſeveral payments which ſhall complete the payments for each of the firſt four years, in reſpect of which ſuch legacy or bequeſt ſhall be chargeable with duty as an annuity.

no receipt available unleſs duly ſtampt, &c.

Copy of entry at ſtamp office of payment of duty; evidence. Stampt receipts for annuities not required but on completing payments for each of the firſt four years.

XXVIII. Any perſon taking execution of a will or adminiſtration of effects, and any truſtee or other perſon hereby directed to account for any duty, who ſhall pay, deliver, or otherwiſe diſpoſe of, or in any way ſatisfy or diſcharge, or compound for any legacy or reſidue, or part of reſidue, to or for the benefit of any perſon or perſons entitled to ſuch legacy, &c. or any part thereof, without taking ſuch receipt or diſcharge in writing as aforeſaid, and cauſing the ſame to be ſtamped within the time hereby allowed for ſtamping the ſame, ſhall forfeit and loſe the ſum of ten pounds *per centum* on the ſum of money, or the value of the property if not money, for which ſuch receipt or diſcharge ought to have been given in purſuance of this act; and all and every perſon and perſons receiving or taking the benefit of any ſuch money, or other property, without giving a written receipt or diſcharge for the ſame, in which the duty payable in reſpect thereof ſhall be expreſſed to have been allowed or paid to the perſon or perſons to whom ſuch receipt or diſcharge ſhall be given,

Penalty of 10l. *per cent.* for paying or receiving legacies without ſtampt receipts.

and which ſhall bear date on the day of ſigning the ſame, ſhall forfeit and loſe the ſum of ten pounds *per centum* on the ſum of money, or on the value of the property, ſo received or taken.

XXIX. Receipts to be ſtampt within 21 days after date, on which an acknowledgment of the payment of the duty ſhall be written. Receipts may be ſtampt within three months after date, on payment of duty, and 10l. per cent. penalty.

XXX. Miſtakes in paying duty may be rectified, if no ſuit be inſtituted, on payment of the difference within three months and 10l. *per cent.*

XXXI. Perſons paying or receiving money contrary to this act, indemnified on diſcovering any other offenders.

XXXII. If by infancy or abſence legacies cannot be paid, the money may be paid into the bank, and laid out in 3l. *per cents.* If ſuch money be improperly paid in the court of chancery may diſpoſe thereof: If more than the proper duty has been paid, the commiſſioners for ſtamps may return the exceſs; and if leſs, on payment of the full duty, the court of chancery may order repayment to the party.

XXXIII. If it ſhall appear to the commiſſioners for ſtamps, at the end of two years after the death of any perſon, that it will require time to collect the effects, or be difficult to aſcertain the reſidue of the perſonal eſtate, the duty may be compounded for: but duty to be paid on every part of perſonal eſtates not included in the compoſition.

XXXIV. If any legacy be refunded, the duty to be repaid.

XXXV. Whenever any perſon or perſons having or taking the burthen of the execution of any will or teſtamentary inſtrument, or the adminiſtration of any perſonal eſtate as aforeſaid, ſhall be entitled to any legacy, or the reſidue, or any part of the reſidue of the perſonal eſtate of any teſtator, teſtatrix, or inteſtate, ſuch perſon ſhall be chargeable with the duty whenever he, ſhe, or they ſhall be entitled, in the due courſe of adminiſtration, to retain, to his, her, or their own uſe, any part of the ſaid eſtate, in ſatisfaction of ſuch legacy, or reſidue, or any part thereof; and every ſuch perſon, before any ſuch retainer, ſhall tranſmit to the ſaid commiſſioners of ſtamp duties, or their officers, a note containing the particulars of ſuch legacy, reſidue, or part of reſidue, intended to be retained, or the amount or value thereof, and the duty which ſuch perſon or perſons ſhall offer to pay thereon; and the ſaid commiſſioners ſhall aſſeſs the duty thereon, and on payment of the ſaid duty, the ſaid receiver general of the ſaid duty, or officer appointed to receive the ſame, ſhall, at the foot of a duplicate of the ſaid aſſeſſment give a receipt for ſuch duty; and in caſe any ſuch perſon or perſons ſhall neglect to pay ſuch duty as afore-

Executors previous to retaining their legacies to tranſmit the particulars with the duty offered to the commiſſioners of ſtamps, who ſhall charge the ſame agreeable to this act.

Penalty for neglect of payment of duty for 14 days.

ſaid within fourteen days after the ſame ought to have been paid as aforeſaid, every ſuch perſon and perſons ſhall forfeit and pay treble the value of the duty which ought to have been paid.

XXXVI. Receipts for legacies, except thoſe by wills reſpecting which the duties impoſed by the acts mentioned in the preamble are repealed, to be deemed receipts within the meaning of thoſe acts; and ſuch receipts to be given for legacies due at the time of paſſing this act, and for legacies becoming due afterwards on which no duty is hereby impoſed.

XXXVII. If adminiſtration be made void, and any duty ſhall have been improperly paid, it ſhall be repaid; but if it ought to have been paid, it ſhall be allowed in account with the rightful executor.

XXXVIII. Perſons ſwearing falſely guilty of perjury.

XXXIX. Penalty of 500l. for altering receipts.

XL. Perſons forging ſtamps, &c. to ſuffer death.

XLI. Receipts duty ſtampt. free from all other duties.

XLII. Powers of former acts relating to ſtamps, to extend to this act.

XLIII. Penalties ſued for within three months, ſhall go *half* to the king, and *half* (with full coſts) to the informer. Suits for penalty incurred without intention of fraud, may be ſtopt by his Majeſty's attorney general.

XLIV. Penalties not ſued for within three months ſhall belong to his Majeſty; but commiſſioners of ſtamps may reward informers.

XLV. All monies ariſing from the ſaid duties to be paid to the receiver general of ſtamp duties, and by him paid into the exchequer.

Limitation of actions.

XLVI. The exchequer to ſet apart from other money, a certain proportion of the duties for ten years.

General iſſue.

XLVII. Actions under this act ſhall be commenced within ſix calendar months after the fact committed; and the defendant or defendants, may plead the general iſſue, and give this act, and the ſpecial matter in evidence; and if the plaintiff or plaintiffs ſhall become nonſuit, or if a verdict ſhall paſs againſt the plaintiff or plaintiffs, or if upon demurrer judgment ſhall be given againſt the plaintiff or plaintiffs, the defendant or defendants ſhall recover treble coſts.

Treble coſts.

TABLE I.

The Value of an Annuity of £100 per Annum, held on a single Life; and payable Yearly.

Years of Age.	Values. £.	s.	d.
Birth	1,032	14	—
1	1,346	10	—
2	1,563	6	—
3	1,646	4	—
4	1,701	—	—
5	1,724	16	—
6	1,748	4	—
7	1,761	2	—
8	1,766	4	—
9	1,762	10	—
10	1,752	6	—
11	1,739	6	—
12	1,725	2	—
13	1,710	6	—
14	1,695	—	—
15	1,679	2	—
16	1,662	10	—
17	1,646	4	—
18	1,630	18	—
19	1,616	14	—
20	1,603	6	—
21	1,591	4	—
22	1,579	14	—
23	1,568	—	—
24	1,556	—	—
25	1,543	16	—
26	1,531	4	—
27	1,518	8	—
28	1,505	6	—
29	1,491	16	—
30	1,478	2	—
31	1,463	18	—
32	1,449	10	—
33	1,434	14	—
34	1,419	10	—
35	1,403	18	—
36	1,388	—	—
37	1,371	12	—
38	1,354	16	—
39	1,337	10	—
40	1,319	14	—
41	1,301	16	—
42	1,283	16	—
43	1,265	14	—
44	1,247	4	—

Years of Age.	Values. £.	s.	d.
45	1,228	6	—
46	1,208	18	—
47	1,189	—	—
48	1,168	10	—
49	1,147	10	—
50	1,126	8	—
51	1,105	14	—
52	1,084	18	—
53	1,063	14	—
54	1,042	2	—
55	1,020	2	—
56	997	14	—
57	974	18	—
58	951	12	—
59	928	—	—
60	903	18	—
61	879	10	—
62	854	14	—
63	829	2	—
64	803	—	—
65	776	2	—
66	748	16	—
67	721	2	—
68	693	—	—
69	664	14	—
70	636	2	—
71	607	10	—
72	579	—	—
73	550	14	—
74	523	—	—
75	496	4	—
76	471	—	—
77	445	14	—
78	419	14	—
79	392	2	—
80	364	6	—
81	337	14	—
82	312	4	—
83	288	14	—
84	270	16	—
85	254	6	—
86	239	6	—
87	225	2	—
88	213	2	—
89	196	14	—
90	175	16	—

TABLE II. *Contains a Calculation of the value of* 100*l. per Annum held on the joint Continuance of two Lives; but as it is very long, incapable of Abridgment, and unlikely to be useful, except in a very few cases, it is here omitted.*

TABLE III.

The Value of an Annuity of £100 per Annum, payable Yearly, for any Number of Years, not exceeding 90.

Years.	Values. £.	s.	d.
1	96	2	—
2	188	12	—
3	277	10	—
4	362	18	—
5	445	2	—
6	524	4	—
7	600	4	—
8	673	4	—
9	743	10	—
10	811	—	—
11	876	—	—
12	938	10	—
13	998	10	—
14	1,056	6	—
15	1,111	16	—
16	1,165	4	—
17	1,216	10	—
18	1,265	18	—
19	1,313	6	—
20	1,359	—	—
21	1,402	18	—
22	1,445	2	—
23	1,485	12	—
24	1,524	12	—
25	1,562	4	—
26	1,598	4	—
27	1,632	18	—
28	1,666	6	—
29	1,698	6	—
30	1,729	4	—
31	1,758	16	—
32	1,787	6	—
33	1,814	14	—
34	1,841	2	—
35	1,866	8	—
36	1,890	16	—
37	1,914	4	—
38	1,936	14	—
39	1,958	8	—
40	1,979	4	—
41	1,999	6	—
42	2,018	10	—
43	2,037	—	—
44	2,054	16	—
45	2,072	—	—

Years.	Values. £.	s.	d.
46	2,088	8	—
47	2,104	4	—
48	2,119	10	—
49	2,134	2	—
50	2,148	4	—
51	2,161	14	—
52	2,174	14	—
53	2,187	4	—
54	2,199	4	—
55	2,210	16	—
56	2,221	18	—
57	2,232	12	—
58	2,242	18	—
59	2,252	16	—
60	2,262	6	—
61	2,271	8	—
62	2,280	4	—
63	2,288	14	—
64	2,296	16	—
65	2,304	12	—
66	2,312	2	—
67	2,319	8	—
68	2,326	6	—
69	2,333	—	—
70	2,339	8	—
71	2,345	12	—
72	2,351	10	—
73	2,357	4	—
74	2,362	14	—
75	2,368	—	—
76	2,373	2	—
77	2,377	18	—
78	2,382	12	—
79	2,387	4	—
80	2,391	10	—
81	2,395	14	—
82	2,399	14	—
83	2,403	10	—
84	2,407	4	—
85	2,410	16	—
86	2,414	4	—
87	2,417	10	—
88	2,420	14	—
89	2,423	14	—
90	2,426	14	—

No. I. *A Will of Freehold and Leaſehold Premiſes, with various Limitations for the Benefit of Wife, Children, and Grandchildren.*

IN THE NAME OF GOD, AMEN, I *Joſeph Salmy*, of the pariſh of *Saint Saints, Darking*, in the county of *Surry*, gent. do make this my laſt will and teſtament as follows, (that is to ſay) FIRST I give and deviſe all thoſe my ſeven freehold meſſuages, three ſugar-houſes, a mill-houſe, ſtore-houſe, cooperage, and appurtenances thereunto reſpectively belonging or appertaining, ſituate, ſtanding, and being near *Deptford Bridge*, in the pariſh of *Saint Paul, Deptford*, in the county of *Kent*, unto my dear wife, *Betty Salmy*, for the term of her natural life, if ſhe ſhall ſurvive me, and ſo long continue my widow; and from and immediately after her deceaſe or marrying again, I give and deviſe the ſaid freehold meſſuages and premiſes to my ſon, *Joſeph Salmy*, and my daughters, *Elizabeth*, *Mary*, and *Hannah Salmy*, during their lives, and the life of the longeſt liver of them, as joint tenants; and from and immediately after the determination of the ſaid ſeveral life eſtates, TO the uſe of *William Boom* and *John Gridiſon* hereafter mentioned, and their heirs, upon truſt, to preſerve the contingent remainders hereinafter limited, and from and immediately after the deceaſe of the ſurvivor of them the ſaid *Joſeph*, *Elizabeth*, *Mary*, and *Hannah Salmy*, I give and deviſe the ſaid freehold meſſuages and premiſes to the heirs of the body of my ſaid ſon *Joſeph*; and for default of ſuch iſſue, I give and deviſe the ſaid freehold meſſuages and premiſes to all and every the child and children of the body of my ſaid three daughters, *Elizabeth*, *Mary*, and *Hannah*, lawfully to be begotten, and to the heirs of the body of ſuch child and children, as tenants in common, and not as jointenants; and for default of ſuch iſſue, I give and deviſe the ſaid freehold meſſuages and premiſes to my brother-in-law, the ſaid *William Boom*, of *Maidſtone*, in the ſaid county of *Kent*, eſquire, his heirs and aſſigns for ever. ALSO I give and bequeath to my ſaid dear wife, *Betty Salmy*, all thoſe my leaſehold meſſuages and warehouſes, with their reſpective appurtenances, ſituate, ſtanding. and being in *Tooley-ſtreet*, in the pariſh of *Saint Saviour*, in the county of *Surry*, now held by me under a grant from *Robert* Lord *Romney*: AND alſo all that my leaſehold meſſuage or tenement, with its appurtenances, ſituate, ſtanding, and being on *Blackheath* in the ſaid county of *Kent*, now in the occupation of *John Boyle*, eſquire, as tenant to me: AND alſo all that my leaſehold eſtate, called or known by the name of *Iron Mill Farm*, ſituate at *Crayford*, in the ſaid county of *Kent*, conſiſting of a farm-houſe, barns,

Deviſe of freehold meſſuages, &c. to teſtator's wife for life, if ſhe ſo long continue a widow.

Remainder to his children;

and their iſſue.

Deviſe of leaſehold eſtate to wife for life, on like condition.

APPENDIX.

ſtables, and other outhouſes, and about one hundred and forty-ſix acres of land, meadow, and paſture ground: AND alſo all that my leaſehold meſſuage or tenement, with its appurtenances, ſituate, ſtanding, and being at *Peckham*, in the ſaid county of *Surry*, now in the occupation of *James Common*, as tenant to me, TO HAVE AND TO HOLD, the ſaid ſeveral leaſehold meſſuages and premiſes, with their reſpective appurtenances, unto my ſaid dear wife, during the term of her natural life, if ſhe ſhall ſurvive me, and ſo long continue my widow. NEVERTHELESS I do hereby ſubject and charge all my ſaid freehold and leaſehold eſtates with a proper proviſion for clothes, maintenance, and education of my ſaid ſon and three daughters during ſuch my ſaid wife's enjoyment of the ſaid eſtates. AND I do hereby direct my ſaid wife, out of the rents and profits of the ſaid eſtates, to find, provide, and pay for ſuch clothes, maintenance, and education of my ſaid ſon and three daughters accordingly; (*viz.*) for my ſaid ſon *Joſeph*, until he ſhall attain his age of twenty-one years, and afterwards to pay him one hundred pounds a year in lieu of ſuch proviſion as aforeſaid: and for my ſaid daughters, until they ſhall reſpectively marry. AND from and immediately after the marrying again, or the deceaſe of my ſaid wife, my will is, and I do hereby give and bequeath my ſaid ſeveral leaſehold eſtates to my ſaid ſon *Joſeph*, and my ſaid daughters *Elizabeth*, *Mary*, and *Hannah*, during their natural lives, as jointenants; and after the deceaſe of the ſurvivor of them, I give and bequeath the ſaid ſeveral leaſehold eſtates to the child and children of my ſaid ſon, equally to be divided amongſt them, if more than one; and in caſe of no ſuch children then living, to all the children of my ſaid three daughters, equally to be divided; and if no ſuch iſſue, then to the ſaid *William Boome*, his executors, adminiſtrators, and aſſigns, for his and their own uſe and benefit. ALSO I give and bequeath all my plate, houſehold goods, and furniture, of what nature or kind ſoever, as well in or about my dwelling-houſe at *Deptford*, as in or about my farm-houſe at *Crayford*, unto the ſaid *William Boome*, and to *John Gridiſon*, of *Baſinghall-ſtreet*, *London*, gent. their executors and adminiſtrators, upon truſt nevertheleſs, that they my ſaid truſtees do and ſhall permit and ſuffer my ſaid dear wife to have the uſe and enjoyment of ſuch plate, houſehold goods, and furniture, during her natural life, if ſhe ſhall ſo long continue my widow; and from and immediately after her marrying again or deceaſe, I do direct my ſaid truſtees to divide the ſaid plate, houſehold goods, and furniture, amongſt my ſaid ſon *Joſeph*, and daughters, *Elizabeth*, *Mary*, and *Hannah*, or ſuch of them as ſhall be then living, in ſuch manner as my ſaid truſtees ſhall think fit. AND whereas I

Subject to maintenance of children.

After deceaſe of wife to children and their iſſue.

Plate and furniture to truſtees *upon truſt*, for the benefit of his wife for life.

Remainder to his children.

have elſewhere provided for my two daughters, *Rebecca* and *Sarah*, on their reſpective marriages, I leave them nothing by this my will. ALSO I give and bequeath the ſum of fifty pounds a-piece to the ſaid *William Boome* and *John Gridiſon*, and do appoint them executors of this my laſt will and teſtament. And I do revoke all former and other wills by me at any time heretofore made.

Legacy of 50l. to each of the truſtees.

Appointment of executors.

Revocation of former wills.

In witneſs whereof I the ſaid *Joſeph Salmy* have to this my laſt will and teſtament, contained in three ſheets of paper, to the firſt two ſheets thereof ſet my hand, and to the laſt ſheet my hand and ſeal, this twelfth day of *November*, in the year of our Lord Chriſt one thouſand ſeven hundred and ninety-three.

Joſeph Salmy, (Seal.)

Attestation.

Signed, ſealed, publiſhed, and declared, by the ſaid teſtator, as for and to be his laſt will and teſtament, in the preſence of us, who in his preſence, and at his requeſt, and in the preſence of each other, have hereunto ſet our names as witneſſes thereof.

Samuel Jones, of *Eling*, *Middleſex*.
Iſaac Manwell, } of *Gray's Inn*, *London*.
Timothy Nealing. }

No. II. *Will of a Widow Woman, deviſing Copyhold and Leaſehold Eſtates, Annuity, and Policy of Inſurance of Houſes, to her Niece, &c. the ſame not to be ſubject to the Controul of her Huſband.*

I *Catherine Thomſon*, late of *Carey-ſtreet*, near *Lincoln's Inn*, and now of *Sloane-ſtreet*, *Chelſea*, in the county of *Middleſex*, widow, (being of ſound and collected mind, and in good health, praiſed be God for the ſame, but mindful of the uncertainty of human life, and in order to prevent any diſpute, or doubt, ariſing after my deceaſe as to the diſpoſition of the property it has pleaſed the Almighty to bleſs me with) DO make and publiſh this my laſt will and teſtament in manner following (that is to ſay) WHEREAS I am poſſeſſed of a certain copyhold tenement or public-houſe, known by the ſign of the three *Cats*, ſituated at *Hampſtead*, in the ſaid county of *Middleſex*, and now or late in the occupation of *Benjamin Ball*, which ſaid tenement has been ſurrendered to the uſe of my will: AND WHEREAS I am alſo poſſeſſed of a leaſe or term of years in a certain other tenement or public-houſe, known by the ſign of the *Lion and Cat*, ſituated in *Carey-ſtreet* aforeſaid, now in the occupation of *Henry Hornby*, his aſſignee or under-tenants: AND WHEREAS I am alſo poſſeſſed of the moiety or half part of an annuity or clear yearly ſum of one hundred pounds, payable during the life of *Henry Scowerfield*,

Preamble.

Recital of the property the teſtatrix is poſſeſſed of.

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of *Winlop* in the county of *Denbigh* in *North Wales*; and alſo of the moiety or half part of the benefit of a policy of inſurance of the annuity granted by the office for equitable aſſurances on lives and ſurvivorſhips, in *Bridge-ſtreet*, *Black-friars*, which policy I believe to be in the poſſeſſion of *Sarah Moore*, widow, and relict of *Edward Moore*, late of *Somerſet-houſe*, in the *Strand*, eſq. deceaſed, who in his life-time had the other moiety or half part of the ſaid annuity: AND WHEREAS I am alſo poſſeſſed of the ſum of three hundred pounds, now in the hands of Mr. *Thomas Caters*, of *Pump Court*, in the *Temple*, gent. and for which I have the note of hand of his late father deceaſed; and of the ſum of one hundred pounds in the hands of *Mr. Charles Bennet*, huſband of my niece, hereinafter named, for which I have his note of hand; NOW as to, for, and concerning my ſaid copyhold tenement at *Hampſtead*, and my ſaid leaſehold houſe in *Carey-ſtreet*, and alſo my part and proportion of the ſaid annuity of one hundred pounds, and of the ſaid policy of inſurance thereof, I give, deviſe, and bequeath the ſame, and every of them, with their and every of their appurtenances, and all and all manner of benefit and advantage whatſoever thereunto belonging or appertaining, unto my niece *Catherine Bennet*, of *Glouceſter-ſtreet*, *Queen-ſquare*, in the county of *Middleſex*, (late *Catherine Fielding*, ſpinſter) to and for her own ſole and ſeparate uſe and benefit, for and during the term of her natural life, the ſame not to be ſubject to the controul or diſpoſition, or to the debts or engagements of her preſent or any future huſband; and from and immediately after the deceaſe of my ſaid niece, I give, deviſe, and bequeath the ſaid two meſſuages or tenements, and the ſaid annuity and policy of aſſurance, together with all benefit and advantage thereof, unto and amongſt all and every the child and children of my ſaid niece, which ſhall be living at the time of my death, to be made over and divided unto and amongſt him, her, and them, in ſuch ſhares and proportions, and at ſuch age and ages, time and times, as my ſaid niece, together with her preſent huſband, if living, ſhall jointly, by deed or will appoint; and if her preſent huſband be then dead, then as my ſaid niece ſhall, whether covert or ſole, by deed or will appoint; and in default of ſuch appointment, then to ſuch child or children, equally to be divided amongſt them, if more than one, ſhare and ſhare alike, to hold as tenants in common; and if there ſhall be but one child, then to ſuch only child abſolutely, the ſame to be made over to the ſaid child or children of my ſaid niece, at the age or reſpective ages of twenty-one years, if the ſame be a ſon or ſons, and at that age or marriage, which ever may firſt happen, in caſe the ſame be a daughter or daughters. And in caſe

Deviſe of ſame to her niece for life.

The ſame not to be ſubject to the controul or engagements of her huſband.

Remainder to the niece's children.

there shall be no child of my said niece living at the time of my decease, then I give, devise, and bequeath the said tenements, annuity, and policy, unto and to the use of my said niece, her heirs and assigns for ever; and as, to, for, and concerning the said two sums of three hundred pounds before mentioned, and also all other the money, securities for money, property and effects of what nature or kind soever which I may be possessed of at my death, and not hereinbefore particularly mentioned, I give and bequeath the same, and every part thereof, after payment of my just debts, unto my said niece absolutely and for ever: and in case of the decease of my said niece without issue, during my life, I nevertheless desire that my said niece will out of my property aforesaid pay unto my dear sister *Mary Pennington*, unto my nephew *Henry Pennington*, and his sister *Elizabeth Pennington*, the sum of five guineas a piece, which I beg their acceptance of, as a small testimony of the love and regard I bear them. AND WHEREAS my late husband, *Giles Thomson*, deceased, by his last will, gave unto *Mary Mouch*, of *Cheltenham*, in the county of *Gloucester*, an annuity of five pounds per annum, to be paid to her by me during the term of her natural life, now I do hereby order that my said niece shall pay the said annuity out of the property I have hereby given her, in such manner as by the will of my said late husband is directed. And I appoint my said niece sole executrix of this my will. In witness whereof I have hereto set my name and seal, this tenth day of *August*, in the year of our Lord one thousand seven hundred and ninety-three.

Remainder to the niece absolutely.

Gift of legacies.

Catherine Thomson. (place of seal.)

Signed, sealed, published, &c.
Susannah Carter.
Charles Simons. } of *Sloane-street*, aforesaid.
Giles Mattington.

No. III. *A Devise of Freehold, Copyhold, Leasehold, and Personal Estates, to Trustees for securing an Annuity to the Testator's Wife.*

IN THE NAME OF GOD, AMEN, I *William Bowyer*, of *James-street, Covent Garden*, in the county of *Middlesex*, gentleman, being of sound and disposing mind and memory, do make and publish this my last will and testament in manner following; first and principally I commend my soul to Almighty God, and my body I desire may be decently interred at the discretion of my executors hereinafter named; and as to such worldly estate as God of his goodness hath bestowed

Preamble.

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Deviſe of freehold, copyhold, leaſehold, and other perſonal eſtates to truſtees.

upon me, I give and diſpoſe thereof as follows; that is to ſay, I give and deviſe all my freehold and copyhold eſtates, whereſoever ſituated, and which copyholds have been duly ſurrendered to the uſe of my will, unto *Peter Sims*, of *Market-ſtreet*, *May-Fair*, in the county of *Middleſex*, gentleman, and *Samuel Philpot*, of *Ludgate-ſtreet*, in the city of *London*, ſilver-ſmith; UPON THE TRUSTS nevertheleſs, and to the intents and purpoſes hereinafter declared of and concerning the ſame, and all my leaſehold eſtates, as well for lives as for years, together with all my perſonal eſtate, of what nature or kind ſoever, I likewiſe, give, deviſe, and bequeath unto the ſaid *Peter Sims*, and *Samuel Philpot*, and their heirs, executors, adminiſtrators, and aſſigns reſpectively (according to the nature of the ſeveral eſtates) upon the truſts nevertheleſs, and to and for the ſeveral intents and purpoſes hereinafter expreſſed and declared of and concerning the ſame, (that is to ſay) upon truſt, by and out of the rents, iſſues, dividends, intereſt, and profits of all my ſaid eſtates, to pay an annuity or yearly ſum of two hundred pounds, clear of all taxes and deductions whatſoever, into the proper hands of my dear wife, *Sarah Bowyer*, during her natural life, for her own proper uſe and benefit, in addition to all other proviſions made for her upon or previous to our intermarriage; and ſo as that the ſaid annuity, or any part thereof, ſhall not be ſubject or liable to the debts, engagements, management, controul, or diſpoſition of any future huſband; the ſaid annuity to be paid and payable by half-yearly payments on the twenty-fifth day of March and the twenty-ninth day of *September*, in every year, by even and equal proportions, the firſt payment of the ſame to begin and be made on ſuch of the ſaid days as ſhall firſt happen after my deceaſe; AND UPON FURTHER TRUST, that the ſaid *Peter Sims and Samuel Philpot* ſhall and may retain the ſum of fifty pounds each for their trouble in performing the truſts of this my will. And I do hereby conſtitute and appoint my ſaid dear wife *Sarah Bowyer*, the ſaid *Peter Sims*, and *Samuel Philpot*, executrix and executors of this my laſt will and teſtament, hereby revoking and annulling all former and other wills, by me at any time heretofore made; and my will is, and I do hereby direct that my ſaid executors and truſtees ſhall each of them be anſwerable for their own ſeparate acts and receipts reſpectively only, and not the one of them for the acts or receipts of the other of them, and that they ſhall not be accountable for any loſs which may happen in my eſtates, by the reaſon of the failure of any ſecurity or ſecurities, whereon the ſame may depend, ſo that the ſame do not happen through any negligence or default of them the ſaid truſtees, or either

Upon truſt out of the rents, &c. thereof to pay an annuity of 200 l. to teſtator's wife.

Truſtees empowered to retain 50l. a-piece for their trouble.

Appointment of executors.

Revocation of former wills.

Truſtees not to be anſwerable for the acts of each other;

Nor for accidental loſſes.

of them; and laſtly I will and direct that my ſaid truſtees do and may retain all the coſts, charges, and expences which they or either of them may ſuſtain in and about the execution of this my will, out of the eſtates and effects hereby in them reſpectively veſted.

Truſtees to retain their expences.

IN WITNESS whereof, &c.

William Bowyer, (place of ſeal.)

Signed, ſealed, publiſhed, &c.

Charles Baker,
William Jeakes, } of *James-ſtreet*, aforeſaid.
Paul Jones,

No. IV. *Deviſe of Freehold and Copyhold Eſtates to Truſtees, to be ſold, for the Benefit of the Teſtator's Children.*

I *Peter Willis*, of, &c. do make and publiſh this my laſt will and teſtament, in manner following, viz. I give and bequeath to my friends *Joſeph Nicholls* and *James Wilſon*, their heirs, executors, adminiſtrators, and aſſigns, all that my freehold meſſuage or tenement, farm, lands, and hereditaments, ſituate, lying and being in &c. with the appurtenances; and alſo all thoſe the cuſtomary or copyhold meſſuages and hereditaments, ſituate and being in, &c. of which I am ſeized, to me and my heirs at the will of the lord, by copy of court roll according to the cuſtom of the manor of *Walton*, and which I have ſurrendered to the uſe of this my will, with their and every of their appurtenances, *to hold* ſuch of the ſaid hereditaments as are freehold to the uſe of them the ſaid *Joſeph Nicholls* and *James Wilſon*, and their heirs, and *to hold* ſuch of the ſaid hereditaments as are cuſtomary or copyhold, to the uſe of them the ſaid *Joſeph Nicholls* and *James Wilſon*, and their heirs, at the will of the lord, according to the cuſtom of the ſaid manor; but both as to the ſaid freehold, and alſo the cuſtomary copyhold hereditaments, upon truſt, that they the ſaid *Joſeph Nicholls* and *James Wilſon*, or the ſurvivor of them, or the heirs, executors, or adminiſtrators of ſuch ſurvivor, do and ſhall with all convenient ſpeed after my deceaſe, ſell, diſpoſe of, and convey, all and ſingular my ſaid freehold and copyhold hereditaments and premiſes, with the appurtenances, and the inheritance thereof, either entirely and together, or in parcels by public auction or private contract, unto any perſon or perſons who ſhall be willing to become and be the purchaſer or purchaſers of the ſame hereditaments and premiſes, or any part thereof, for the moſt money that can be reaſonably had for the ſame, and do and ſhall for that purpoſe, make and execute all ſuch deeds, conveyances, ſurrenders, and aſſurances, as they the ſaid *Joſeph Nicholls* and *James Wilſon*, or the ſurvivor of them, or the heirs or aſſigns of ſuch ſurvivor ſhall think fit; and I do hereby declare my will to be, that upon payment of

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the money to arise from such sale or sales, or any of them, or any part or parts thereof respectively, it shall and may be lawful to and for the said *Joseph Nicholls* and *James Wilson*, and the survivor of them, and the heirs and assigns of such survivor, to give and sign any receipt or receipts for the money to arise thereby, which receipt or receipts shall be good and sufficient discharge or discharges to any purchaser or purchasers thereof, his, her, and their respective heirs, executors, administrators, and assigns, for so much of the said purchase money as shall be therein expressed or acknowledged to have been received, and such purchasers, his, her, and their respective heirs, executors, administrators, or assigns, shall not afterwards be obliged to see to the application of such purchase money, or answerable or accountable for any loss, misapplication, or non-application thereof, or any part thereof respectively; and my will and mind is, and I do hereby direct, that the said *Joseph Nicholls* and *James Wilson*, and the survivor of them, and the heirs, administrators and assigns of such survivor, shall stand possessed of and interested in the monies to arise by such sale or sales respectively as aforesaid, upon the several trusts, and for the several ends, intents, and purposes, and subject to, with and under the several powers, provisoes, conditions, declarations, and agreements herein after mentioned and contained, of and concerning the same respectively, (that is to say) in trust, with all convenient speed, to sell and dispose of the said messuages or tenements, and premises, and every of them, for the best price that can be got for the same, and divide the money arising thereby, and the rents and profits thereof in the mean time unto and amongst my children, *John*, *Richard*, and *Elizabeth*, equally, share and share alike, and to pay my said sons their shares thereof, when and as they shall respectively attain the age of 21 years, and my said daughter her share, when she shall attain that age, or be married, with the consent of my father, the said monies in the mean time to be placed out on security at interest, to and for their several uses, benefit, and education, respectively; and if my sons, or either of them shall happen to die before he or they shall have attained the age of twenty-one years, without lawful issue, or my said daughter shall happen to die before she shall have attained the said age of twenty-one years, or be married with such consent as aforesaid, then the part or share of him, her, or them, so dying, shall go to and be divided amongst the survivors and survivor of my children, share and share alike; and all the rest, residue, and remainder of my goods, chattels, debts and personal estate, of what nature or kind soever, after payment of such just debts as I shall owe at the time of my decease, I give and bequeath unto my said three children, to be equally divided amongst them, share and share alike, to be paid to my said sons, severally, as they shall

Devise of residue.

reſpectively attain the age of twenty-one years, and to my ſaid daughter, when ſhe ſhall have attained that age, or be married, with the conſent of my ſaid father, which ſhall firſt happen, and the intereſt and profits of each one's ſhare, in the mean time to go and be applied for the maintenance and education of my ſaid children reſpectively; and my will and meaning is, that if any or either of my ſaid children ſhall happen to die before the ſaid legacies hereby intended for them ſhall become payable as aforeſaid, then I give and bequeath the part and ſhare of him, her or them, ſo dying, to and between the ſurvivors or ſurvivor of my ſaid children, equally, ſhare and ſhare alike. Alſo I give and bequeath *(here inſert bequeſts to legatees, &c.)* In witneſs, &c.

Peter Willis, (L. S.)

Signed, ſealed, &c. in the preſence of
Charles Mackey, of, &c.
John Bates, of, &c.
Timothy Danes, of, &c.

No. V. *Will of Perſonal Property to Executors for Payment of Debts, with Powers for them to compound, &c.*

This is the laſt will and teſtament of me, *John Phipps*, of, &c. whereby I give and bequeath unto *William Jones* and *Samuel Minors*, both of, &c. eſqrs. whom I appoint executors of this my will, all my ready money, and all ſuch ſums of money as ſhall be owing to me at the time of my deceaſe, upon mortgages by ſpecialty or ſimple contract, and all and ſingular other my perſonal eſtate and effects whatſoever, and whereſoever, not herein after by me otherwiſe diſpoſed of upon truſt, that they the ſaid *William Jones* and *Samuel Minors*, or the ſurvivor of them, or the executors, adminiſtrators, or aſſigns, of ſuch ſurvivor, do and ſhall, with all convenient ſpeed after my deceaſe, call in and compel payment of all ſuch part of my perſonal eſtate as ſhall conſiſt of money owing upon ſecurities or otherwiſe, and do and ſhall ſell and diſpoſe of and convert into money ſuch part or parts thereof as ſhall not conſiſt of money; and my mind and will is, that it ſhall and may be lawful to and for the ſaid *William Jones* and *Samuel Minors*, and the ſurvivor of them, and the executors, adminiſtrators, and aſſigns, of ſuch ſurvivor, to compromiſe or compound any ſum or ſums of money owing to me at the time of my deceaſe, and to adjuſt, ſettle, and compromiſe all accounts which at the time of my deceaſe ſhall be depending between me and any other perſon or perſons whomſoever, and to give or allow ſuch reaſonable time or indulgences for the payment of the ſame reſpectively,

and in the mean time to accept and take such securities or assurances for the payment thereof as they or he shall in their or his discretion think fit; and my will and mind is, that the said *William Jones* and *Samuel Minors*, and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall, by with and out of the money so raised by the ways and means last herein before mentioned, satisfy and discharge all such debts as shall be due and owing by me to any person or persons whomsoever, by specialty, simple contract, or otherwise howsoever at the time of my decease, and the interest of such of the said debts as shall carry interest, with full power to admit such evidence of any debt or debts as to him or them shall seem sufficient; and in the next place, do and shall satisfy and discharge the several legacies and bequests of this my will, or which I shall or may give or bequeath by any codicils thereto. *(Here insert legacies and bequests.)*

In witness, &c.

John Phipps.

Signed, sealed, &c. in the
presence of
Silson Pateman, of, &c.
Isaac Barnes, of, &c.

No. VI. *Introductory Part of a Will, or rather Testamentary Appointment by a Feme Covert.*

THIS is the last will and testament, or writing in nature of the last will and testament, of me *Sarah Mount*, the wife of *John Mount*, of, &c. being or intended to be also an appointment made pursuant to and by force and virtue, and in exercise and execution of the power and authority to me for this purpose, given in and by certain indentures of lease and release bearing date respectively, the first and second days of *April*, 1798, the release being of four parts and made or expressed to be made between *John Mount*, the elder, of the first part, the said *John Mount*, my husband, of the second part, me the said *Sarah Mount*, of the third part, and *William Sion*, of, &c. of the fourth part, and every other power and authority whatsoever, enabling me in this behalf, do by this writing, signed and sealed by me in the presence of three credible witnesses, whose names are, or are intended to be written or endorsed hereon as witnesses to my having signed and sealed the same, and which writing I hereby declare to be and contain my last will and testament, limit, direct, and appoint that all that and those my messuage and tenements, lands and hereditaments hereinafter particularly mentioned and described, that is to say, *(here describe the estates)* shall from and immediately after my decease, go, continue, and

be unto *Peter Johnſon* and *Samuel Ironſide*, both of, &c. eſqrs. and their heirs, to and for the ſeveral uſes, eſtate, intents, and purpoſes hereinafter limited, expreſſed, and declared concerning the ſame, (that is to ſay) to the uſe and behoof, &c. &c. *(as in a will.)*

No. VII. *Croſs Remainders limited between Children and Grandchildren by Will.*

IN TRUST for all and every my ſon and ſons, daughter and daughters, for and during the term of their reſpective natural lives, to be equally divided between them, if more than one, ſhare and ſhare alike, to take as tenants in common, and not as joint tenants; and if I ſhall have but one ſuch ſon or daughter, then upon truſt for ſuch only ſon or daughter during the term of his or her natural life, and after the ſeveral and reſpective deaths of ſuch ſon or ſons, daughter or daughters, then as to their ſeveral and reſpective part and parts, ſhare and ſhares, upon truſt for all and every his, her, or their child or children, their heirs and aſſigns for ever, to be equally divided among them, if more than one, ſhare and ſhare alike, as tenants in common, and not as joint tenants, and if but one ſuch child, to the uſe of ſuch only child, his or her heirs and aſſigns for ever. But in caſe any ſuch children of my ſons and daughters, being ſons, ſhall die under his or their age or ages of *twenty-one* years, or being daughters, under the age of twenty one years, and unmarried, then and in ſuch caſe upon truſt, as to the original part and ſhare, parts and ſhares, as well as concerning ſuch other part and ſhare, parts and ſhares, as by virtue of this preſent clauſe, ſhall have become veſted in and accrue unto any other of the children of my ſaid ſons or daughters, by the ſame father or mother, upon the death of any other or others of ſuch laſt mentioned children as aforeſaid, for the ſurvivors or others of ſuch children by the ſame father or mother, and their heirs and aſſigns for ever, equally to be divided between ſuch remaining and other children of my ſaid ſons and daughters, if more than one, ſhare and ſhare alike, as tenants in common, and not as joint tenants; and if there ſhall be but one remaining or other child, then upon truſt for that child and his heirs and aſſigns for ever; but in caſe all ſuch child and children by the ſame father and mother as ſhall be ſons, ſhall happen to die before their, or any of their reſpective age or ages of twenty-one years, and in caſe all and ſuch of them all as ſhall be daughters, ſhall happen to die before their or any of their reſpective age or ages of twenty-one years, or marriage, then, and in ſuch caſe, as to the original part or parts, ſhare or ſhares of the ſame child or children, by the ſame father or

mother, as well as to such other part or parts, share or shares, as by virtue of this present clause shall have become vested in or accrue unto such child or children by the same father or mother in trust for all and every my other son or sons, daughter or daughters, and the children of such sons and daughters, in case any of them shall happen to be dead, leaving issue, in equal shares and proportions, but the child and children of the son and sons, daughter and daughters who shall then happen to be dead, shall be entitled only to the share which his, her, or their father or mother would have been entitled to if living, equally to be divided amongst such children, if more than one, share and share alike, to take as tenants in common, and not as joint tenants, and if there should be but one child, then to that child; but my said sons and daughters who shall be then living, and the children of my said sons and daughters who shall then be dead, shall respectively be entitled by this my will, only to such estate and interest, in such accruing part or parts, share or shares, and be liable respectively to the same contingency of survivorship, between and amongst my surviving son or sons, daughter or daughters, and the children of such sons or daughters, in case any of them shall happen to be dead, leaving issue as aforesaid, as is hereinbefore by me given, devised and directed, concerning his. her, or their original part or parts, share or shares of my real estate. *Provided nevertheless*, and my will is, that in case any or either of my said sons, or daughters, shall happen to die without leaving children, then, and in such case, from and immediately after the decease of any or either of my said sons or daughters without leaving children as aforesaid, my said trustees, and the survivor of them, and the heirs of such survivor shall be seized of my real estates in trust as to the original part and parts, share and shares of such sons and daughter who shall depart this life without leaving children, as well as to such other part and share, parts and shares, as by virtue of this present clause, shall have become vested in or accrued unto such of the same son or sons, daughter or daughters, upon the death of any other of my said sons and daughters, without leaving children of such sons and daughters respectively, in case any of them shall happen to be dead without leaving issue, in equal shares and proportions; but such sons and daughters, and the child and children of such the said sons and daughters as shall happen to be dead, shall be respectively entitled only to such share of estate and interest of and in such accruing part and parts, share and shares of my said real estate, and the same shall be liable to the like contingencies of survivorship, to and among my surviving son and sons, daughter and daughters, and the children of such sons and daughters in case any of them shall happen to

be dead without leaving iſſue, in manner as I have hereinbefore given, deviſed, and directed, of and concerning the original part and parts, ſhare and ſhares of ſuch ſons and daughters, and their children. *Provided alſo*, and my will is, that in caſe all my ſaid ſons and daughters ſhall happen to depart this life without any child or children of them or any of them living at his or their reſpective deaths, or there being ſuch child or children, all ſuch of them as ſhall be ſons ſhall die under the age of twenty-one years, and all ſuch of them as ſhall be daughters, ſhall die under the age of twenty one years, and unmarried, then and in ſuch caſe the part and ſhare, parts and ſhares of each of them my ſaid children ſhall be, go and remain to the uſe and behoof of my brothers *James Pilfold* and *Henry Pilfold*, their heirs and aſſigns for ever, equally to be divided between them as tenants in common and not as joint tenants.

Remainder over to brothers.

No. VIII. *Part of a Will whereby the Teſtator gives a ſum of Money to be inveſted in Stock, for the benefit of a Son and his Iſſue—the Son to have the Intereſt for Life, or till Bankruptcy—the Iſſue to be entitled afterwards.* N. B. *Settled by Mr.* Fearne.

I GIVE and bequeath unto *William Knowles*, and *Thomas Wells*, their executors, adminiſtrators, and aſſigns, the ſum of 4000l. of lawful money of Great Britain, *upon the truſts*, and to and for the intents and purpoſes hereinafter expreſſed and declared of and concerning the ſame, (that is to ſay) upon truſt that they the ſaid *William Knowles* and *Thomas Wells*, and the ſurvivor of them, his executors, adminiſtrators, and aſſigns, do and ſhall lay out and inveſt the ſame in parliamentary ſtocks or public funds, or on real or government ſecurities at intereſt, and from time to time alter, change, and vary the ſecurities as he or they ſhall think fit, and do and ſhall from time to time pay the intereſt, dividends, and produce of the ſaid ſum of 4000l. or of the ſtocks, funds, or ſecurities in which the ſame ſhall be inveſted, to my ſaid ſon *Kingſton*, and his aſſigns, or otherwiſe permit and ſuffer, and fully authoriſe and impower him and them to receive and take the ſame, until the time of his deceaſe, or of a commiſſion of bankruptcy iſſuing againſt him, whichever ſhall firſt happen; and from and after the deceaſe of my ſaid ſon, or a commiſſion of bankruptcy iſſuing againſt him, *upon this further truſt*, that they the ſaid truſtees, or the ſurvivor of them, his executors, adminiſtrators, and aſſigns, ſhall and do pay, transfer, and ſet over the ſaid principal ſum of 4000l, and all intereſt, dividends, and produce thereupon due or to become due, and the ſecurity or ſecurities

APPENDIX. in which the ſame ſhall be then inveſted, unto and amongſt all and every the child and children of my ſaid ſon, equally to be divided between or amongſt them, if more than one; and if but one, then the whole to ſuch one, and to belong to and be an intereſt veſted in ſuch child or children being a ſon or ſons at his or their age or reſpective ages of *twenty-one* years; or being a daughter or daughters, at her or their age or reſpective ages of twenty-one years, or day or reſpective days of marriage, which ſhall firſt happen; and to be paid, transferred and aſſigned at ſuch ages, days, or times, to ſuch child and children reſpectively, not attaining the ſaid ages, days, or times till after the deceaſe of my ſaid ſon, or after a commiſſion of bankruptcy iſſued againſt him; but the ſhare or ſhares of ſuch child or children attaining the ſaid ages, days, or times before the deceaſe of my ſaid ſon, or before a commiſſion of bankruptcy (if any) iſſued againſt him, to be paid and payable, and to be transferred to him, her, or them reſpectively, immediately after the deceaſe of my ſaid ſon, or a commiſſion of bankruptcy iſſued againſt him, whichever ſhall firſt happen, with the intereſt, dividends, or produce thereupon due or to become due from and after the times of ſuch deceaſe or commiſſion of bankruptcy, whichever ſhall firſt happen: *And upon further truſt*, that they the ſaid truſtees and the ſurvivor of them, or the executors, adminiſtrators, and aſſigns of ſuch ſurvivor, ſhall and do in the mean time, and after the deceaſe of my ſaid ſon, or a commiſſion of bankruptcy iſſued againſt him, whichever ſhall firſt happen, pay, apply, and diſpoſe of the clear yearly intereſt, dividends, and produce of the ſhare of every ſuch child whoſe ſhare ſhall not then be veſted or payable; as and when the ſame ſhall from time to time become due, and be received for the maintenance and education of ſuch child reſpectively, until his or her reſpective ſhare or ſhares ſhall become veſted or payable, if he, ſhe, or they ſhall ſo long live. *Provided always*, and it is my will, and I do hereby direct that if any ſuch child ſhall depart this life before the ſhare hereby intended or provided for him or her ſhall become veſted, then the ſhare or ſhares (as well original, as accruing by virtue of this preſent clauſe or proviſo) hereby intended and provided for every ſuch child, ſo dying, ſhall from time to time go, accrue and belong unto the ſurvivor, and others or other of the ſaid children, and ſhall be equally divided between or amongſt them, if more than one, but if but one, the whole to that one, and to become veſted and be paid and payable to him, her, or them at ſuch ages or days and times, and in the ſame manner as is or are herein-before directed, provided, and declared concerning his, her, or their original ſhares reſpectively.

No. IX. *A Bequeſt of the Reſidue of a Teſtator's Perſonal Eſtate to be laid out in the Purchaſe of Lands in truſt for the unborn Son of the Teſtator's eldeſt Son, and the heirs of his body, with remainder to the Teſtator's future Children.* (*Settled by Mr.* Fearne.)

I GIVE and bequeath all the reſt and reſidue of my monies, ſecurities for monies, ſtocks, funds, perſonal eſtate and effects whatſoever, not herein-before by me otherwiſe given and diſpoſed of, unto *James Urkins* and *Richard Villers*, their executors, adminiſtrators and aſſigns, *upon truſt* and confidence that they the ſaid *James Urkins* and *Richard Villers*, their executors, or adminiſtrators, do and ſhall as ſoon as conveniently may be after my deceaſe, and a convenient purchaſe or purchaſes be found, lay out and inveſt the ſame in the purchaſe of freehold lands or hereditaments, to be ſituated in that part of Great Britain called *England*, of a clear indefeaſible eſtate of inheritance in fees ſimple, to be conveyed and aſſured to the uſe of the truſtees or truſtee ſo purchaſing the ſame, their or his heirs and aſſigns for ever, *upon the truſts*, for the intents and purpoſes, and under, and ſubject to the proviſoes and declarations hereinafter by me expreſſed or declared concerning the ſame (that is to ſay) *in truſt* for the firſt ſon of the body of my ſon *Iſaac Iſrael*, lawfully iſſuing, and the heirs of the body of ſuch firſt ſon: and in default of ſuch iſſue in truſt for the ſecond, third, fourth, fifth, ſixth, and all and every other ſon and ſons of the body of the ſaid *Iſaac*, lawfully iſſuing, ſeverally and ſucceſſively, and in remainder one after another in order and courſe, as they reſpectively ſhall be in priority of birth, and the ſeveral and reſpective heirs of the body and bodies of all and every ſuch ſon and ſons, the elder of ſuch ſons and the heirs of his body being always preferred, and to take before the younger of ſuch ſons, and the heirs of his and their body and bodies; and *in default of ſuch iſſue* in truſt for all and every the daughter and daughters of the body of my ſaid ſon lawfully iſſuing, equally to be divided between or amongſt them, if more than one, ſhare and ſhare alike as tenants in common and not as joint tenants, and the ſeveral and reſpective heirs of the body and bodies of all and every ſuch daughter and daughters; and if there ſhall be but one ſuch daughter, then in truſt for ſuch only daughter and the heirs of her body; and in caſe there ſhall be more than one ſuch daughter and there ſhall be a failure of lawful iſſue of the body or bodies of any ſuch daughter or daughters, then as to the original part and ſhare, or parts and ſhares of any ſuch daughter or daughters whoſe iſſue ſhall ſo fail, as well as to ſuch other part and and ſhare, or parts and ſhares, as by virtue of this preſent

APPENDIX. clauſe ſhall have become veſted in, or have accrued unto any ſuch the ſame daughter or daughters, or her or their iſſue, upon the failure of iſſue of any other or others of the ſaid daughters, in truſt for the remaining and other or others of the ſaid daughters to be equally divided between or among them, if more than one, ſhare and ſhare alike as tenants in common and not as joint tenants, and the ſeveral and reſpective heirs of the body and bodies of ſuch remaining and other daughters; and if there ſhall be but one ſuch remaining and other daughter, then in truſt for the daughter and the heirs of her body, *(remainder to the children of ſeveral other ſons of teſtator, with remainder to the children of ſeveral of his daughters)* and in default of ſuch iſſue then *in truſt* for every *future (a)* ſon and ſons of me the ſaid *Jacob Iſrael* (the teſtator) ſeverally, ſucceſſively, and in remainder one after another in order and courſe as they ſhall reſpectively be in priority of birth, and the ſeveral and reſpective heirs of the body and bodies of all and every ſuch future ſon and ſons, the elder of ſuch ſon and ſons and the heirs of his body being always preferred and to take before the younger of ſuch ſons and the heirs of his and their body and bodies, *and in default of ſuch iſſue*, in truſt for all and every the future daughter and daughters of my body lawfully iſſuing, to be divided between or amongſt them, if more than one, ſhare and ſhare alike, as tenants in common and not as joint tenants. and the ſeveral and reſpective heirs of the body and bodies of all and every ſuch daughter and daughters; and if there ſhall be but one ſuch daughter, then in truſt for ſuch only daughter and the heirs of her body, and in caſe there ſhall be more than one ſuch daughter, and there ſhall be a failure of lawful iſſue of the body or bodies of any ſuch daughter or daughters then as to the original part and ſhare, parts and ſhares of any ſuch daughter or daughters whoſe iſſue ſhall ſo fail, as to ſuch other part and ſhare, or parts and ſhares as by virtue of this preſent clauſe ſhall have become veſted in or have accrued unto any ſuch, the ſame daughter or daughters, or her or their iſſue upon the failure of iſſue of any other or others of the ſaid daughters, in truſt for the remaining and other or others of the ſaid daughters to be equally divided between or among them if more than one, ſhare and ſhare alike, as tenants in common and not as joint tenants, and the ſeveral and reſpective heirs of the body and bodies of ſuch remaining and other daughters, and if there ſhall be but one ſuch remaining daughter, then in truſt for that one daughter and the heirs of her body; *and for want*

(a) See poſt. p. 117, note (*b*).

of such issue, in trust for my own right heirs for ever *(b)*. *Provided always*, and my will and mind is and I have so directed the land so to be purchased as aforesaid to be conveyed and assured to the use of my said trustees or trustee so purchasing the same, their or his heirs, in manner aforesaid, in order and to the end and intent that the legal estate and inheritance in fee simple thereof may be thereby vested in such trustees or trustee; and that they or he, their or his heirs shall stand seized thereof, in trust, and for the purpose of supporting and preserving the said several future contingent limitations to the issue of my said children respectively, as fully and effectually to all intents, constructions and purposes as if I had limited particular estates to trustees during the lives of my said children respectively, or otherwise, upon or for such express trust or purpose, it being my intent and meaning that no person shall under the limitations and trusts aforesaid, become entitled to the same lands in possession or to the rents and profits thereof during such time as any antecedent limitation remains in contingency and capable of taking effect, (that is to say) whilst there is any possibility in the eye of the law, of any other person or persons coming in esse, who if then in esse would take a prior estate in the same lands under the trusts and limitations herein-before expressed or contained. AND as to the interest, dividends, and proceed of the said trust monies and effects so directed to be invested in the purchase of lands as aforesaid, and the rents, issues, and profits of the lands to be purchased therewith, which shall arise or accrue as well from the time of my decease until some person or persons shall become entitled thereto in possession under the limitations aforesaid, as during any interval which may happen from the determination of any preceding limitation, to take effect

(b) As the limitation to the testator's right heirs is not until *default of his issue*, it is requisite to limit these estates tail to his *future children* (as above p. 116.) in order to carry the estate to the *issue of such children*; but, this will give such *future* children themselves of course tail in the premises, which puts them upon a much better footing than the *present* children, who are to have no benefit at all of the trust premises; but there is no extending the benefit through failure of issue of the testator in any other manner; and it will be an easy matter upon the birth of any future child to add a limitation to the issue of such child like those of the issue of the present children, and for the testator to execute the will with such additions and alterations." *C. F.*

in poſſeſſion under the limitations and truſts of this my will, I do hereby will and direct that the ſame ſhall be received by the truſtees or truſtee of the ſaid truſt monies, eſtates, and premiſes for the time being, to accumulate and be inveſted in his or their name or names, in the purchaſe of other like lands and hereditaments in fee ſimple as aforeſaid, to be conveyed and aſſured to ſuch and the ſame uſes, upon ſuch and the ſame truſts, and to and for ſuch and the ſame intents and purpoſes, and under and ſubject to ſuch and the ſame proviſions, limitations, and directions, as are in and by this my will limited expreſſed, declared, or directed, of and concerning the lands ſo directed to be purchaſed with the ſaid monies to ariſe from the reſidue of my perſonal eſtate and effects, or to, for and upon, and ſubject to ſuch or ſo many of them as ſhall then be ſubſiſting, undetermined, or capable of taking effect. And I do hereby further will, declare, and direct, that in the mean time and until the monies ſo ariſing from the reſidue of my ſaid perſonal eſtate and effects ſo directed to be inveſted in the purchaſe of lands upon the aforeſaid truſts, and the intereſt, dividends, and produce thereof ſo directed to accumulate and be inveſted aforeſaid, and ſuch of the rents and profits of the lands ſo to be purchaſed as are herein-before directed to accumulate and be inveſted in the purchaſe of lands, purſuant to the directions or truſts in this my will expreſſed or contained in that behalf, the truſtees or truſtee of the ſame truſt monies, eſtates, and premiſes for the time being ſhall inveſt the ſame in their or his own name or names, in parliamentary ſtocks, or the public funds, or real or government ſecurities, at intereſt, and alter and change the ſame ſecurities as often as they ſhall think fit, and ſhall and do pay, apply and diſpoſe of the intereſt, dividends, and produce thereof according to the ſame truſts, for the ſame ends, intents, and purpoſes, to the ſame perſon or perſons and in the ſame manner in all reſpects as the rents and profits of the lands to be purchaſed with the aforeſaid truſt monies and effects under the truſts aforeſaid would be payable, and liable to be applied and diſpoſed of in caſe ſuch lands were then actually purchaſed.

"I have ſettled the above draught of the two clauſes deſired in ſuch a manner as I think will avoid all thoſe queſtions which ſo frequently ariſe upon limitations, of the nature of thoſe now deſired. The minuteſt alteration or omiſſion of any of the words of the proviſoes I have ſubjoined to the limitations might open the door to ſuch queſtions, and therefore they ſhould be carefully attended to."

CHARLES FEARNE.

No. X. *A Bequeſt of a Sum of Money to Truſtees to be inveſted in the Stocks, or put out at Intereſt, the Dividends, &c. to be at the ſeparate Diſpoſal of a* Feme Covert *during her Life, and on her Death the Principal to be divided amongſt her Children.*

I GIVE and bequeath the ſum of 10001. of lawful money of *Great Britain*, to the ſaid *James Hales* and *William Knowles*, their executors, adminiſtrators, and aſſigns, upon and for the truſts, intents, and purpoſes and with, under, and ſubject to the powers, proviſoes, and declarations hereinafter expreſſed, of or concerning the ſame, (that is to ſay) *upon truſt*, that they the ſaid *James Hales* and *William Knowles*, and the ſurvivor of them, and the executors, adminiſtrators, and aſſigns, of ſuch ſurvivor, do and ſhall lay out and inveſt the ſame in their or his names or name, in the purchaſe of parliamentary ſtocks or funds of *Great Britain*, or at intereſt upon real ſecurities in ſome of his majeſty's dominions in Europe or America, and do and ſhall from time to time, alter and vary the ſame at their or his diſcretion, and do and ſhall, during the life of my daughter *Ann*, the wife of *Richard Penman*, eſq. pay the intereſt, dividends, and annual produce thereof to ſuch perſons for ſuch intents and purpoſes, and in ſuch manner as ſhe my ſaid daughter ſhall by any writing or writings, ſigned by her (whether covert or ſole) as the ſame ſhall from time to time become due and payable, but not by way of anticipation, direct or appoint, or for want of ſuch directions or appointment into her own hands, for her own ſole, ſeparate and peculiar uſe and benefit, and excluſively of and without being in anywiſe ſubject or liable to the debts, intermeddling or controul of her preſent or any future huſband, and I declare it to be my will, that the receipts in writing of my ſaid daughter, or of the perſon or perſons to whom ſhe ſhall direct the ſaid intereſt, dividends, and annual produce to be paid, ſhall, notwithſtanding her coverture, be a good and ſufficient diſcharge, and good and ſufficient diſcharges for the ſaid intereſt, dividends, and annual produce, or ſo much thereof as in ſuch receipts reſpectively ſhall be expreſſed or mentioned to be received. And from and after the deceaſe of my ſaid daughter *Ann*, *upon truſt*, that they the ſaid truſtees, and the ſurvivor of them, or the executors, adminiſtrators, or aſſigns of ſuch ſurvivor, do and ſhall pay, transfer and aſſign the ſaid ſum of 1000l. and the ſtocks, funds, and ſecurities in or upon which the ſame or any part thereof ſhall be inveſted or laid out, and the intereſt, dividends, and annual produce thereof, to, between, or among all and every, or ſuch one or more, excluſively of the other or others, of the child or children of my ſaid daughter, either by her preſent

or any future husband, or unto all and every, or such one or more of the lawful issue born in the lifetime of my said daughter, of any of the said children, or both, unto such one or more of the said children, and such one or more of their or any of their issue, born in the lifetime of my said daughter, at such age or ages, from fourteen inclusive to twenty-one inclusive, in such manner and if more than one, in such shares and proportions as my said daughter, by any deed or deeds, or instrument or instruments in writing, to be sealed and delivered by her in the presence of, and attested by two or more credible witnesses, or by her last will and testament, or by any codicil or codicils thereto to be signed and published by her in the presence of, and attested by the like number of witnesses shall, notwithstanding her present or any future coverture, direct and appoint, and for want of such directions and appointment, do and shall pay, transfer, and assign the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, to, between, or among all and every the children or child of my said daughter, who being a son or sons, shall attain the age of twenty-one years, or depart this life under that age leaving issue living at the time of his or their decease or respective deceases or born in due time after, or being a daughter or daughters, shall attain that age, or marry, to be divided between or among such children, if more than one, in equal shares and proportions, and if but one child, the whole of the trust monies, stocks, funds, and securities to such one child; and if there be no child of my said daughter *Ann*, who being a son, shall attain the age of twenty-one years, or depart this life under that age leaving issue of his body living at the time of his decease or born in due time after, or being a daughter, shall attain that age, or marry, then the said trust money, stocks, funds, and securities shall be considered as part of the surplus or residue of my personal estate, and be disposed of accordingly.

No. XI. *Power enabling Devisees to charge the devised Estate with Jointures.*

PROVIDED also, and it is my further will and meaning, that it shall and may be lawful to and for the said *Andrew Thomas*, *Jeremiah Williams* and *Samuel Keate*, and each and every of them respectively, as, and when they respectively shall be entitled to the possession, or the rents and profits of the said manors and hereditaments hereinbefore by me devised, or any of them, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by them respectively, in the presence of, and attested by two or more credible witnesses,

to grant, limit, ſettle, or appoint, to, or to the uſe of, or in truſt for any woman or women whom they reſpectively ſhall happen to marry; and that either before or after ſuch marriage reſpectively, for and during the natural life or lives of ſuch woman or women reſpectively, for or in the name of her or their jointure or jointures, or of part of her or their jointure or jointures, any annual ſum or yearly rent-charge not exceeding 150l. by the year, tax free, and without any deduction, to be iſſuing out of, and to be charged and chargeable upon all or any part of the ſaid manors and hereditaments whereof they ſhall then be entitled to the poſſeſſion, or to the rents and profits thereof, and alſo to annex to ſuch rent-charge reſpectively, ſuch powers and remedies for the recovering of the ſame when in arrear, and to raiſe, create, and demiſe ſuch truſt, term, or term of years reſpectively, of or in the hereditaments ſo charged, and under ſuch truſt, powers and proviſions, for the better ſecuring the due payment of the ſame rent-charge or rent-charges reſpectively, from and immediately after the deceaſe of them the ſaid *Andrew Thomas*, *Jeremiah Williams*, and *Thomas Keate*, reſpectively, as are uſually annexed to rent-charges, or raiſed, created, or demiſed for ſecuring the ſame. PROVIDED NEVERTHELESS, and it is my mind and will, that my ſaid eſtates ſhall not be ſubject to the payment of more than two ſuch jointures or rent-charges at one and the ſame time; but nevertheleſs the execution of the aforeſaid jointuring power by any of the perſons to whom it is given as aforeſaid, ſhall not be prevented, prejudiced, or invalidated by reaſon of there being two or more ſuch jointures or rent-charges then ſubſiſting and charged upon the ſaid eſtates, but ſhall be good and effectual notwithſtanding the ſaid eſtates ſhall not be liable or ſubject to the payment of the jointure or rent-charge thereby limited, ſettled or appointed, ſo long as two other ſuch jointures or rent-charges as aforeſaid, prior thereto, ſhall be ſubſiſting, charged upon the ſaid eſtates or any part thereof.

XII. *Power in a Will for Truſtees to grant Leaſes for 21 Years, during the Continuance of a Truſt Term, and for the Tenants in Poſſeſſion after the Expiration thereof.*

PROVIDED ALSO, and it is my further will and meaning, that it ſhall and may be lawful to and for the ſaid ——————— (the truſtees) and the ſurvivors and ſurvivor of them, and the executors and aſſigns of ſuch ſurvivor, from time to time, during the continuance of the ſaid term of 500 years, and from and after the expiration or other ſooner determination thereof, for the ſaid *Andrew Thomas*, *Jeremiah Williams*, and *Samuel Keate*, reſpectively, as and when they ſhall reſpectively be entitled to

APPENDIX. the poſſeſſion, or to the rents and profits of the ſaid manors and hereditaments in the ſaid county of *Wilts*, and in the kingdom of *Ireland*, by this my will, deviſed as aforeſaid, by indenture or indentures, to be ſealed and delivered by them reſpectively, in the preſence of, and atteſted by two or more credible witneſſes, to make any demiſe or leaſe, demiſes or releaſes of all or any part of the ſaid hereditaments and premiſes in the ſaid county of *Wiltſhire*, and in the kingdom of *Ireland*, whereof they ſhall reſpectively be entitled to the poſſeſſion, or to the rents and profits thereof for any term or number of years, not exceeding *twenty-one* years, as to the premiſes in the ſaid county of *Wiltſhire*, and not exceeding *thirty-one* years as to the premiſes in the ſaid kingdom of *Ireland* in poſſeſſion, and not in reverſion, or by any way of future intereſt, and ſubject to the reſtrictions hereinafter mentioned; *and alſo* that it ſhall and may be lawful to and for them the ſaid *Andrew Thomas*, *Jeremiah Williams*, and *Samuel Kyte*, reſpectively, from time to time, and at all times during their reſpective lives, and when they ſhall reſpectively be in poſſeſſion of or entitled to the rents and profits of the ſaid manor and hereditaments in the ſaid counties of *Hants* and *Somerſet*, by this my will deviſed as aforeſaid, by indentures, to be ſealed and delivered by them reſpectively, in the preſence of, and atteſted by two or more credible witneſſes, to make any demiſe or leaſe, demiſes or leaſes, of all or any part of ſuch hereditaments and premiſes in the ſaid counties of *Hants* and *Somerſet*, whereof they ſhall ſo reſpectively be entitled to the poſſeſſion or the rents and profits (except only my manſion-houſe at Mill Hill, with the appurtenances, and the lands and hereditaments occupied therewith) for any term or number of years not exceeding *twenty-one* years, in poſſeſſion, and not in reverſion, or by way of future intereſt: *Provided*, and ſo that there is reſerved in every ſuch future demiſe or leaſe of the premiſes, the beſt and moſt improved yearly rent and rents, to be incident to the immediate reverſion of the premiſes ſo to be demiſed, that can be had or obtained for the ſame, without taking any fine, premium, or forgift, or any thing in the nature of a fine, premium, or forgift for the making thereof, and ſo as there be contained in every ſuch demiſe, or leaſe, a condition of re-entry on non-payment of the rent thereby to be reſerved within twenty-one days after the ſame ſhall become payable, and ſo as the leſſee or leſſees to whom ſuch leaſe or leaſes ſhall be made, do execute a counterpart or counterparts thereof, and do thereby covenant for the due payment of the rent to be thereby reſpectively reſerved, and be not by any clauſe or words therein contained, made diſpuniſhable for waſte, or exempted from puniſhment for committing waſte, and ſo as there be contained in every ſuch leaſe ſtipulations under ſufficient penalties

for tilling, manuring, and managing the lands and premiſes thereby demiſed in a huſbandlike manner in all reſpects, according to the cuſtom of the county or place where the ſame ſhall reſpectively be ſituated.

No. XIII. *Power in a Will for Deviſees to ſell and exchange deviſed Eſtates with the Conſent of the Truſtees.*

PROVIDED alſo, and it is my further will and meaning, that it ſhall and may be lawful to and for the ſaid *Robert Atkins*, *Thomas Atkins*, and *Nicholas Moore*, reſpectively, from time to time, during their reſpective lives, as and when they ſhall reſpectively be entitled to the poſſeſſion or to the rents and profits of the ſaid manor and hereditaments hereby deviſed, with the conſent and approbation of the ſaid *Thomas Yates*, *William Sole*, and *Samuel Miles*, (*truſtees*) or the ſurvivors or ſurvivor of them, his executors and adminiſtrators, teſtified in writing, under their or his hands and ſeals, hand and ſeal, notwithſtanding any of the uſes, eſtates, limitations or truſts herein before deviſed, limited, and contained, to make ſale and diſpoſe of, or to convey in exchange for any other manor, meſſuage, lands, and hereditaments, free from incumbrances, to be ſituate ſomewhere in *England*, if the hereditaments which ſhall be conveyed in exchange are in *England*, or to be ſituated either in *England* or *Ireland*, if the hereditaments which ſhall be ſo conveyed in exchange are ſituate in *Ireland*, all or any part or parts of the ſaid manors, meſſuages, lands and hereditaments hereby deviſed, and the fee ſimple thereof, to any perſon or perſons whomſoever, and for the end or purpoſe of making any ſuch ſale or exchange by any deed or deeds, writing or writings, under the hand and ſeal of ſuch of them, the ſaid *Robert Atkins*, *Thomas Atkins*, and *Nicholas Moore*, as ſhall be then in poſſeſſion or entitled to the rents and profits of the ſaid manors and hereditaments hereby deviſed, atteſted by two or more credible witneſſes, and with ſuch conſent and approbation as laſt mentioned, to revoke and make void all and every the uſes, truſts, and limitations, powers and proviſoes hereinbefore deviſed, limited and contained, of and concerning the ſame premiſes reſpectively, or any part thereof, and to limit, declare or appoint ſuch new or other uſe or uſes, truſt or truſts, eſtate or eſtates, of and concerning the ſame, as ſhall be requiſite and neceſſary to effectuate ſuch ſale or exchange, but ſubject nevertheleſs and without prejudice to any leaſe or leaſes which ſhall then have been granted or demiſed of any of the ſaid deviſed premiſes, by virtue and in purſuance of the ſaid power hereinbefore in that behalf contained, or any of them; and it is my further will and meaning, and I declare that all and

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every the monies arising by such sale or sales aforesaid, shall be paid to and be received by them the said trustees, or the survivors or survivor of them, his executors or administrators, whom I do hereby authorise and employ upon payment of the money arising by sale or sales of any part of the said premises, to sign and give proper receipts for such purchase money; and I do hereby will and declare, that such receipt and receipts shall be a sufficient discharge to any purchaser or purchasers for so much of the purchase money as shall in such receipt or receipts be acknowledged or expressed to be received, and such purchaser or purchasers shall not afterwards be answerable for any loss, misapplication, or non-application of the said purchase money, or be in anywise concerned to see to the application thereof, which money is so to be paid to and received by the said trustees, or the survivors or survivor of them, his executors or administrators, *in trust*, to be by them or him forthwith, or as soon as conveniently may be, laid out and invested with the consent and approbation of the person or persons who for the time being shall be entitled to the rents of my said real estates, in the purchase of other manors, messuages, lands and tenements, or hereditaments, in fee simple, free from incumbrances, to be situated somewhere in *England*, or to be situate either in *England* or *Ireland*, if the hereditaments which shall be so sold for such money, be in *Ireland*, and that thereupon as well the manors, messuages, and hereditaments so to be purchased, as all and every the manors, messuages, lands and hereditaments which shall come or be taken by way of, or in exchange for any part of the said premises hereby devised as aforesaid, shall be settled, conveyed, and assured to such and the same trusts, and under and subject to such and the same charges, powers, provisoes, limitation and conditions, as under and by virtue of the limitations in this my will they stood limited, or were declared and subsisting at or immediately before the time of such sale or sales respectively, of and concerning the hereditaments so sold, or to, for, upon and subject to such, and so many of them as shall be then undetermined and capable of taking effect except only this present power of selling and exchanging.

No. XIV. *Directions in a Will, that if by bad Debts or otherwise the Testator's Estate shall become insufficient to pay Children's Legacies, they shall sustain the Loss equally.*

AND my will further is, that in case the said several legacies or sums of two hundred pounds a piece hereinbefore given and made payable to my said three children in manner aforesaid, shall by reason or on account of any debt or debts due and owing, or which hereafter may grow due and owing to my personal

eſtate, or by any other loſſes, misfortunes, or means whatſoever, my ſaid eſtate ſhall prove or become inſufficient to anſwer and pay to my ſaid three children, or any of them, their reſpective full legacies of two hundred pounds a piece, at the times and in the manner hereinbefore directed and appointed for payment thereof, then and in ſuch caſe I do hereby order, will, direct, and appoint, that all ſuch loſſes or deficiencies ſo happening to my ſaid eſtate ſhall be borne and ſuſtained by all and every my ſaid three children, who ſhall then be entitled to the ſaid legacies of two hundred pounds a piece, and that in equal proportions, ſhare and ſhare alike, any thing in this my will contained to the contrary thereof in anywiſe notwithſtanding.

No. XV. *A Nuncupative Will.* (a)

THE following is the laſt will and teſtament, in writing, of *Jacob Finch*, late of *Wimbledon*, in the county of *Somerſet*, gent. deceaſed, who whilſt of ſound and diſpoſing mind, declared the ſame to us whoſe names are hereunto ſubſcribed, deſiring it might be conſidered and taken to be his laſt will and teſtament, and requeſting we would bear witneſs thereto. *(Here inſert the words of the teſtator.)*

Benjamin Fanſhaw, of *Fleet-ſtreet*, *London*.
Iſmael Williams, } of *Wimbledon*, aforeſaid.
Charles Fenchell, }

No. XVI. *A Codicil to deviſe Lands purchaſed ſince the Teſtator's Will, to the Uſes of ſuch Will—to add a new Truſtee thereof, and appoint Guardians to his Children.*

WHEREAS I *Samuel Knapp*, of, &c. have by my laſt will and teſtament, bearing date the 10th day of May 1796, given and deviſed all my lands and hereditaments ſituated in the county of *Bedford*, unto *William Nillingford* and *John Tyler*, their heirs and aſſigns, upon ſuch truſts, intents, and purpoſes as are therein declared concerning the ſame. And whereas ſince the making and publiſhing this my ſaid will, I have purchaſed certain other meſſuages, lands, and hereditaments ſituated in or near *Halling* in the ſaid county of *Bedford*. Now I do hereby give and deviſe all the ſaid lands and hereditaments ſituated at or near *Halling* aforeſaid, which I have purchaſed ſince the execution of my ſaid will, as alſo the meſſuages, lands, and hereditaments in my ſaid will heretofore given and deviſed as aforeſaid, unto and to the uſe of the ſaid *William*

(a) See *ante*, p. 26.

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Nillingford and *John Tyler*, and unto *William Mages* of, &c. their heirs and assigns for ever, upon such trusts, nevertheless, and to and for such ends, intents, and purposes as in and by my said will are expressed and declared of and concerning the said messuages, lands, and hereditaments thereby devised unto the said *William Nillingford* and *John Tyler*, their heirs and assigns as before mentioned. And I do hereby also appoint the said *William Mages*, one of the executors of my said will, together with the said *William Nillingford* and *John Tyler* already thereby appointed executors thereof. Also I appoint them the said *William Nillingford*, *John Tyler*, and *William Mages*, guardians of the persons and estates, rights, and interests, of my said three children *John*, *Richard*, and *William*, until they shall severally attain their respective ages of twenty-one years. And I do hereby declare this present writing to be by me intended to be a codicil to my said last will and testament, and the same shall be deemed and taken as part thereof, as fully and effectually to all intents and purposes as if the contents hereof had been actually inserted and comprised in the said will. In witness whereof I the said *Samuel Knapp* have hereunto set my hand and seal this 28th day of *April* 1798.

Samuel Knapp, (L. S.)

Signed, sealed, published, &c.
Fen. Milliardet, of, &c.
Richard Obertoon, of, &c.

No. XVII. *A short Release or Renunciation of an Executorship.*

TO all to whom this present writing shall come, *Samuel Disney*, clerk, doctor in divinity, sendeth greeting; whereas *John Faines* of, &c. in the county, &c. deceased, did make his last will and testament in writing on or about, &c. in the year of our Lord God, &c. and thereby made *Sarah* his wife and the said *Samuel Disney* executors thereof, as by such last will and testament may appear, now know ye, that the said *Samuel Disney* for divers good causes and considerations him thereunto moving hath renounced and released, and by these presents doth renounce and release the same executorship; and doth refuse and disclaim to take upon him the burthen thereof, or the probate of the said will: and further the said *Samuel Disney* for himself, his executors and administrators, doth covenant and grant to and with the said *Sarah Faines*, relict of the said *John Faines* deceased, her executors and administrators, that he the said *Samuel Disney* shall not nor will henceforth act or intermeddle in the said executorship or in any of the estates or effects of the said *John Faines* deceased, by reason thereof.

In witneſs whereof the ſaid *Samuel Diſney* hath hereunto ſet his hand and ſeal the 26th day of January 1798.

Samuel Diſney, (L. S.)

Signed, ſealed, &c.

Richard Willis, of, &c.
John Townſhend, of, &c.

No. XVIII. *A Confirmation of a Will.*

(Indorſed on the back thereof.)

WHEREAS ſince the making my laſt will and teſtament, as within mentioned, I have taken to myſelf a wife, by which the ſame, or part thereof, might be deemed void in law: Now I do, notwithſtanding the ſaid circumſtance, in all reſpects confirm and re-eſtabliſh my aforeſaid will, and deſire the ſame may ſtill be deemed and taken to be my laſt will and teſtament.

As witneſs my hand and ſeal, this twentieth day of *July* one thouſand ſeven hundred and ninety-four.

Sabel James, (place of ſeal.)

Signed, ſealed, publiſhed, &c.

John Conner,
Thomas Fell,
Thomas Timms. } of *Finch-ſtreet, Mary-le-bone*.

No. XIX. *An Account of the Stamps required by Act of Parliament to be impreſſed on Diſcharges for Legacies, and diſtributive Shares of Perſonal Property.*

BY 20th Geo. 3. c. 28, as altered by 23 of ſame reign, c. 58. and 29 *ibid.* c. 51, it is provided that on all diſcharges of legacies or diſtributive ſhares of perſonal property, there ſhall be impreſſed the following duties, *viz.*

If the legacy or ſhare be

	£.	s.	d.
Of or under the value of 20l. the ſum of	0	5	0
Above 20l. and under 100l. — —	0	10	0
100l. and under 200l. — — —	2	0	0
200l. and under 300l. — — —	3	0	0
300l. and under 400l. — — —	4	0	0

and for every further ſum of 100l. the additional duty of 2l. for each hundred.

and for every ſum above 1000l. an additional duty of 20l. for each thouſand.

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But diſcharges from the *wife, children, and grand-children* of the teſtator, or of the inteſtate, are by the aforeſaid ſtatutes exempted from the above duties, and inſtead thereof are chargeable with the following, *viz.*

	£.	s.	d.
For any legacy or ſhare of the value of 20l. or under — — —	0	2	6
Above 20l. and under 100l. — —	0	5	0
100l. and upwards — — —	1	0	0

BUT by 36 Geo. 3, c. 52, (which ſee ante p. 85,) the above acts of 20, 23, and 29, Geo. 3, are in part repealed, and other duties impoſed in lieu of thoſe by ſuch acts granted; and for the prevention of miſtakes and inconveniences in the receipt and payment of legacies and ſhares of perſonal eſtates, in purſuance of ſuch act of 36th Geo. 3. the commiſſioners of ſtamps have iſſued the following obſervations and abſtract, viz.

The duties granted by the above act do not attach upon legacies and perſonalty left by teſtators and inteſtates who died on or before the 26th of *April*, 1796.

That legacies under the amount or value of 20l. and ſhares of perſonal eſtates under the clear value of 100l. are ſubject only to the former duties.

That the duties upon legacies and ſhares of perſonalty taken by huſbands, wives, children, and grand children, or any lineal deſcendants, remain alſo unaltered by this act;

That *ſtamped receipts* muſt therefore continue to be taken, as before, for payments in the ſeveral caſes before-mentioned; which ſtamps may be had, as uſual, at the head office, and at the offices of the ſeveral diſtributers and ſub-diſtributers in the country; but,

That, *in all other caſes*, receipts muſt be taken on *unſtamped* paper or parchment; and muſt within twenty-one days from the date be brought to the head office in London, or to the ſaid diſtributers or deputies, in order to their being ſtamped; and the duty muſt be paid on leaving ſuch receipts.

THE new duties payable by the ſaid act of 36 Geo. 3. are,

2l. *per cent.* on all legacies, ſpecific and pecuniary, of 20l. value or amount, or more, and on every clear reſidue, or ſhare of the clear reſidue, of a perſonal eſtate, or ſhare therein, of the amount or value of 100l. or upwards, given or paſſing to brothers or ſiſters of the deceaſed or their deſcendants.

. *per cent.* on ditto to uncles or aunts or their deſcendants.

4l. *per cent.* on ditto to great uncles or great aunts or their deſcendants.

And 6l. *per cent.* on ditto to any other collateral relation or any ſtranger in blood to the deceaſed. *As will be more fully ſeen by the abſtract of the act given in the preceding pages.*

No. XX. *The Form of a common Receipt for a Legacy* (*a*).

Received, the ſixth day of *June*, one thouſand ſeven hundred and ninety-four, of *Jeremiah Simpſon*, eſquire, and *James Johnſon*, gentleman, executors of the laſt will and teſtament of *Samuel Ruſſell*, late of *Bedford ſquare*, merchant, deceaſed, the ſum of fifty pounds; being in full for a legacy to that amount given to me in and by the ſaid will of the ſaid *Samuel Ruſſell*, bearing date the tenth day of *Auguſt*, one thouſand ſeven hundred and ninety-three.

As witneſs my hand,

William Peters.

Witneſs,

Thomas Fill.

No. XXI. *A more regular and formal Diſcharge for a Legacy.*

To all to whom theſe preſents ſhall come, I *William Peters*, of *Theobald's-Road*, in the pariſh of *Saint George the Martyr*, in the county of *Middleſex*, baker, ſend greeting: WHEREAS *Samuel Ruſſell*, late of *Bedford-ſquare*, in the aforeſaid county, merchant, deceaſed, in and by his laſt will and teſtament in writing, bearing date on or about the tenth day of *Auguſt*, which was in the year of our Lord one thouſand ſeven hundred and ninety-three did give and bequeath unto me the ſaid *William Peters* the ſum of fifty pounds; and conſtituted *Jeremiah Simpſon*, and *James Johnſon*, of *Iſlington*, in the ſaid county of *Middleſex*, gentlemen, executors of his ſaid will: Now know ye that I the ſaid *William Peters* do hereby acknowledge to have received of and from the ſaid *Jeremiah Simpſon* and *James Johnſon* the ſaid ſum of fifty pounds, ſo given and bequeathed to me by the will of the ſaid *Samuel Ruſſell* as aforeſaid, and thereof, and of and from the ſame, and every part thereof, do fully and abſolutely acquit, releaſe, exonerate, and for ever diſcharge the ſaid *Jeremiah Simpſon* and *James Johnſon*, and each of them, their and each and every of their heirs, execu-

(*a*) See the proper ſtamps on which receipts and diſcharges for legacies are to be written, *ante* No. XIX.

APPENDIX.

tors, administrators, and assigns, and also the estate and effects of the said *Samuel Russell*, deceased, and every part thereof: And I the said *William Peters* do hereby, for myself, my executors, administrators, and assigns, and for every of them, remise, release, and for ever quit claim unto the said *Jeremiah Simpson* and *James Johnson*, their heirs, executors, and administrators, and every of them, all and all manner of action and actions, cause and causes of action, suits, legacies, sum and sums of money, judgments, executions, claims, and demands whatsoever, both at law and in equity, which I the said *William Peters* now have, or at any time heretofore had, or which I, my executors, administrators, or assigns, hereafter may have, claim, challenge or demand, against the said *Jeremiah Simpson* and *James Johnson*, or either of them, as executors as aforesaid, their or either of their heirs, executors, or administrators, or the estate and effects of the said *Samuel Russell*, deceased, for, by reason, or on account of the said sum of fifty pounds, so given and bequeathed to me in and by the last will and testament of the said *Samuel Russell*, deceased, or any part thereof.

IN WITNESS whereof I the said *William Peters* have hereunto set my hand and seal, this fifth day of *June*, one thousand seven hundred and ninety-four.

Wm. Peters, (place of seal.)

Sealed and delivered in the presence of

John Mimms,
Samuel Gill. } *Bedford-square*.

XXII. *The Form of an Inventory of the Goods and Chattels of the Deceaſed, to be exhibited to the Ordinary by an Executor or an Adminiſtrator, purſuant to the Oath and Bond entered into at the Time of obtaining Probate or Adminiſtration* (a).

A TRUE and perfect inventory of all and every the goods and chattels, as well moveable as not, debts, credits, and other perſonal eſtate and effects, of *Jacob Simpſon*, late of the pariſh of *Matlock*, in the county of *Cambridge*, in the dioceſe of *Ely*, gentleman, deceaſed; made by us whoſe names are hereunto ſubſcribed, the 10th day of *January*, in the year of our Lord Chriſt one thouſand ſeven hundred and ninety-five.

	£.	s.	d.
Money in the houſe, the property of the deceaſed	50	0	0
677*l.* 3 *per cent.* conſol. bank annuities, at 75 —	500	0	0
Money on mortgage to *James Sell*, eſq. of *Banbury*	600	0	0
4 horſes — — — —	90	0	0
6 cows and one bull — — —	70	0	0
50 ſheep, at *per* average 1*l.* — —	50	0	0
3 ſwine, at ditto — — —	3	0	0
Poultry — — — —	2	0	0
Corn growing — — —	80	0	0
Corn and hay in barns and outhouſes — —	20	0	0
Carts and implements of huſbandry — —	30	0	0
Wearing apparel — — —	15	0	0
Books — — — —	8	0	0
Plate — — — —	10	0	0
Houſehold furniture — — —	100	0	0
Leaſe for 21 years from *Michaelmas* 1785, of the teſtator's houſe of reſidence — —	60	0	0
Rent in arrear due to the deceaſed, for a houſe ſituate No. 35, *Welbeck-ſtreet*, *Cavendiſh-ſquare*, *London* — — —	40	0	0
Miſcellaneous other debts, due to the deceaſed, ſuppoſed recoverable — — —	18	0	0
Total —	1,746	0	0
Debts due to the deceaſed, but ſuppoſed to be irrecoverable — — — —	59	2	6
Debts owing by the deceaſed at the time of his death	16	4	2

Taken and appraiſed by us, the day and year firſt above written.

William Maſon, } of *Matlock*, ſworn
Peter Fairwell, } appraiſers.

(a) This inventory, purſuant to ſeveral acts of parliament, *muſt* be written on *ſtamped* paper or parchment.

No. XXIII. *An Account of the usual Expences of taking out Administration and obtaining Probate of a Will, as well in the common Form as by Commission* (a).

Where the Value of the Goods, Chattels and Credits of a petty Officer, common Seaman, or Marine, in the King's Service, is	In Common Form.						By Commission.					
	Probates.			Administrations.			Probates.			Administrations.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.
Under 10	No administration is necessary.											
£. Under 20	0	6	0	0	14	0	0	18	0	1	6	0
20, and under 40	0	19	6	1	7	0	1	15	0	2	8	0
40, and under 60	1	3	0	1	11	0	1	19	6	2	7	6
60, and under 100	1	7	6	1	15	6	2	6	0	2	14	0
With respect to all other Persons, where the Value of the Goods, &c. is												
£. Under 5	0	8	6	0	9	6	0	17	0	0	18	0
5, and under 6	0	15	6	1	2	6	1	13	0	1	19	8
6, and under 20	1	2	0	1	9	6	2	1	0	2	8	0
20, and under 40				2	4	6				3	6	8
40, and under 100	2	3	0	2	14	6	3	11	8	3	17	4
100, and under 300	4	13	0	5	7	10	6	4	8	6	10	4
300, and under 600	8	3	0	8	17	10	9	14	8	10	0	4
600, and under 1000	11	1	4	11	16	2	12	13	0	12	18	8
1000, and under 2000	18	2	10	18	17	8	19	17	10	20	3	6
2000, and under 5000	25	2	10	25	17	8	26	17	10	27	3	6
5000, & under 10,000	37	2	10	37	17	8	38	17	10	39	3	6
Above 10 000	48	16	2	49	11	0	50	11	2	50	16	10

It is to be observed however that the above fees, &c. apply only to such wills as are very short. If they be more than three or four sheets (each sheet containing ninety words) there will be an additional expence of about 2s. a sheet, and there will also be an additional expence of about 25s. in case the will is not subscribed by two witnesses.

(a) A commission is granted to take probate where the executor is ill, or where he lives in the country, and the probate is grantable in London.

(3)

THE LAWS RESPECTING MASTERS AND SERVANTS, ARTICLED CLERKS, APPRENTICES, MANUFACTURERS, LABOURERS, AND JOURNEYMEN.

COMPRISING ALSO

The LAWS respecting COMBINATIONS amongst WORKMEN; and all other Matters relative to Masters and their Servants.

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IN surveying the different parts of our Legal Jurisprudence, with a view to the completion of our "Directions for the Laws of England," the provisions and alterations subsisting in the relation between Masters and Servants, appeared in us to complete a subject of public concern and importance [illegible] terial division in such a work, and [illegible] happy to find, has been fully confirmed by the voice of the public, which demand for the two former impressions of the following Digest, has induced us to present them with a THIRD, in which every improvement and addition has been made, that seemed calculated to insure a continuance of that approbation, with which the labours of the author have hitherto been honoured.

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Amb.	Ambler's Reports.
And.	Anderson's Reports.
Atk.	Atkyn's Reports.
Bac. Ab.	Bacon's Abridgment. 8vo.
Black. Com.	Blackstone's Commentaries.
Black. Rep.	Blackstone's Reports.
Brow. Ch. Rep.	Brown's Reports in Chancery.
Bulf.	Bulstrode's Reports.
Bur.	Burrow's Reports.
Cart.	Carter's Reports.
Carth.	Carthew's Reports.
Ca. Temp. Holt	Cases in the time of Chief Justice Holt.
Ch. Rep.	Chancery Reports in the time of Car. I.
Co. Lit.	Coke's Commentary upon Littleton's Tenures.
Com. Rep.	Comyn's Reports.
Com. P.	Common Pleas.
Comb.	Comberbach's Reports.
Cowp.	Cowper's Reports.
Cro. Eliz.	Croke's Reports in the time of Q. Elizabeth.
Cro. Car.	Do. in the time of King Charles.
Cro. Jac.	Do. in the time of King James.
Doug.	Douglas's Reports.
Dy.	Dyer's Reports.
Eq. Ca. Abr.	Equity Cases abridged.
Finch.	Finch's Law.
Fitz. N. Brev.	Fitzherbert's Natura Brevium.
Gilb. Rep.	Gilbert's Reports.
Gouldsb.	Gouldsborough's Reports
Godolph.	Godolphin.
Haw. P. C.	Hawkin's Pleas of the Crown.
Hale P. C.	Hale's Pleas of the Crown.
Hob.	Hobart's Reports.
Keb.	Keble's Reports.
Leo.	Leonard's Reports.
Lev.	Lavinz's Reports.
March.	March's Reports.
Mod.	Modern Reports.
Moor.	Moor's Reports.
Ow.	Owen's Reports.
P.	Page.
Plow.	Plowden's Commentaries.
Peere Will.	Peere Williams's Reports.
Prec. Chan.	Precedents in Chancery.
Raym.	Lord Raymond's Reports.
Rep.	Reports.
Roll. Ab.	Rolle's Abridgment.
Salk.	Salkeld's Reports.
Seff. Ca.	Sessions Cases.
Sid.	Siderfin's Reports.
Show.	Showers' Reports.
Show. Par. Ca.	Showers' Parliament Cases.
Stra.	Strange's Reports.
Sty.	Styles's Reports.
Term Rep.	Term Reports in the King's Bench, by Durnford and East.
Vaugh.	Vaughan's Reports.
Vent.	Ventris's Reports.
Vern.	Vernon's Reports.
Vez.	Vezey's Reports.
Vid.	See.
Vin. Abr.	Viner's Abr.
Will. Just.	Williams' Justice of the Peace.
Wilf.	Wilson's Reports.
Wood.	Woodeson 's View of the Law.

THE LAWS RESPECTING MASTERS AND SERVANTS.

CHAP. I.

OF DOMESTIC, USUALLY STILED MENIAL SERVANTS.

Menial or domeſtic ſervants.

THE relationſhip which ſubſiſts between a maſter and a ſervant, from the ſuperiority and power which it creates on the one hand, and duty, ſubjection, and, as it were, allegiance on the other, is in many inſtances applicable to other relationſhips, both of a ſuperior and ſubordinate kind, ſuch as lord and bailiff, principal and attorney, owners and maſters of ſhips, merchants and factors, and all ſuch others as have authority to enforce obedience to their orders from thoſe whoſe duty it is to obey them, and whoſe acts, being conformable to their duty and office, are eſteemed the acts of their principals. 4 *Bac. Abr.* 8vo. 555. but ſome of theſe being treated of in other parts of our Selections, and others being foreign to the deſign of the preſent compilation, we ſhall here conſider that relationſhip only which exiſts between *Maſters* and *Servants*, in the common and familiar acceptation of thoſe words; and ſhall begin with menial or domeſtic ſervants.

Menial ſervants are ſo called, not as a term of degradation, but from their living *intra mœnia*, i. e. within the houſe or walls of the maſter.

SERVANTS. In considering the law relative to this species of servants, we shall inquire

I. Concerning the hiring, and discharging them; and their departure from service.

II. The interest a master has in their time and attendance; and the authority he may exercise over them.

III. The acts of servants for which the master is answerable.

IV. The acts of servants for which they are answerable to their masters.

V. Of the giving false characters with servants.

I. *Concerning the Hiring of Servants, the discharging of them, and their Departure from Service.*

1. Hiring of servants.

1. Of the hiring.

The relation between a master and his menial, or domestic servant, arises upon the contract between them, which is usually called the *hiring*, this may be made, either in writing, or by a verbal declaration, and for any time that may be agreed upon between them.

In *London* and other great towns, where it is often difficult to learn the real character of a servant, a common mode of hiring is by what is called month's warning, or month's wages; that is to say, the parties agree to separate on either of them giving to the other a month's notice for that purpose, or in lieu thereof, the party requiring the separation to pay or give up a month's wages; and this kind of hiring seems to have been sanctioned by the courts.

But if the hiring of a servant be general, without any particular time specified, the law will construe it to be a hiring for a year certain, which it does upon a principle of natural equity, that the servant shall continue with and be maintained by the master, through all the revolutions of the seasons, as well when there is work to be done as when there is not. *Co. Lit.* 42. *Noy Max.* 108. and in this case, if the servant depart before the year, he shall not be entitled to his wages. *Ibid.*

And it has been held that where a servant is hired for one year certain, and so from year to year, as long as both parties shall agree, and the servant enter upon a second year, he must serve out that year, and is not merely a

ſervant at *will* after the expiration of the firſt year. 2 *Keb.* 16.

2. Of diſcharging ſervants.

2. Diſcharging ſervants.

By ſtat. 5 Eliz. chap. 4. (*a*) after a ſervant is hired, his maſter cannot diſcharge him either before or at the end of the term of hiring, (this is to be underſtood where the hiring is for a year certain, or for an indefinite time, which is conſtrued to be for a year) without giving a quarter of a year's previous warning, unleſs for ſome cauſe which ſhall be thought ſufficient, and be allowed by a juſtice of the peace, on pain that the maſter forfeit 40s unleſs at the time of entering into the contract it was agreed that ſome other warning ſhould be given. 1 *Black. Com.* 425. ſee alſo *poſt.* chap. iii. ſec. iii.

But notwithſtanding the ſtat. Eliz. if a ſervant be guilty of incontinence, or any other moral infamy, whilſt in his maſter's ſervice, it has been held that the maſter may diſcharge him without application to a juſtice. *Cald.* 11. 14. 134. and ſo if he be taken into cuſtody for any offence, and legally detained, ſo that he is prevented from completing his ſervice, the maſter is authorized to diſcharge him. *Ibid.* 129. But in this caſe it was ſaid by Lord Mansfield, that if the offence of which the ſervant is guilty was committed before the time of hiring, the maſter will not be entitled of his own accord to diſcharge him on that account.

Illneſs of ſervants.

Nor can a maſter diſcharge his ſervant within the year, or abate his wages, on account of any hurt, or illneſs, by which he may be diſabled from doing his uſual buſineſs. *Wood Inſt.* 52. nor even for inſanity, without an order of a juſtice. 5 *Term Rep.* 659. 6 *ib.* 587.

Miſbehaviour of ſervants, &c.

Neither for rudeneſs, or other miſbehaviour of ſervants, can the maſter diſcharge him, nor can the ſervant leave his maſter on account of ill treatment by the maſter or miſtreſs; but in theſe and like caſes, application muſt be made to a juſtice for a diſcharge, as directed by the ſtat. of Eliz. of which more will be ſeen, *poſt.* chap. iii. ſec. iii.

(*a*) This ſtatute relates more particularly to artificers and ſervants of huſbandry, but it is imagined that it may be well conſtrued to give juſtices a general juriſdiction over ſervants of every deſcription, and ſuch juriſdiction is in fact exercied by them.

SERVANTS.

3. Departure from ſervice.

3. Departure from ſervice.

As a maſter cannot diſcharge a yearly ſervant without a quarter's warning, ſo neither can ſuch ſervant leave his maſter's ſervice without ſimilar notice, under pain of impriſonment, unleſs they part by mutual conſent, or in conſequence of ſome previous agreement for ſhorter notice, or laſtly, unleſs for cauſe to be allowed by a juſtice. 5 *Eliz.* chap. 4.

And the refuſing to do the maſter's buſineſs, is held in law to be a departure from ſervice under the ſtatute, notwithſtanding the continuance of the ſervant under his maſter's roof. *Dalt. Juſt.* 187.

And though a woman ſervant marry ſhe muſt nevertheleſs ſerve out her term, and her huſband cannot take her out of her maſter's ſervice. *Ibid.* 58.

Obſervation.

We ſhall now conſider ſuch incidents to the relation between maſter and ſervant, as may affect other perſons as well as themſelves; in doing which, we ſhall in this place confine ourſelves to thoſe acts which are more likely to occur between the maſter and his menial or domeſtic ſervant, than thoſe of any other deſcription, though they will in truth, as we ſhall ſee hereafter, equally apply to thoſe of the latter as of the former denomination.

II. *As to the Intereſt a Maſter has in the Time and Attendance of his Servant; and the Authority he may exerciſe over him.*

1. The intereſt of a maſter in the ſervice of his domeſtics.

1. The intereſt a maſter has in the time and attendance of his ſervant.

From the intereſt which the maſter has in the ſervice of his domeſtics, by reaſon of the wages which he pays them, he may maintain an action againſt any one who has by any means deprived him of their ſervice, as by having maimed his ſervant, or the like. 9 *Co.* 113. and for the preſervation of ſuch ſervice, the better opinion is, that he may juſtify aſſaulting another in the defence of his ſervant. 2 *Roll. Abr.* 546. 1 *Blac. Com.* 429. *Leſt's Rep.* 215.

And, in general, if a ſervant is diſabled in his maſter's ſervice by an injury received, through anothers default, the maſter may recover damages for loſs of his ſervice.

As where a perſon dug a ditch in the highway, whereby his ſervant broke his leg, damages were recovered. 1 *Roll. Abr.* 88.

And ſo if a ſurgeon in conſideration of a ſum of money,

undertake to cure a ſervant of a hurt, and by his unſkilfulneſs make him worſe, by which the maſter loſe his ſervice, an action will lie. 1 *Roll. Abr.* 98. 2 *Bulſt.* 332. SERVANTS.

For a ſimilar reaſon a maſter may maintain an action againſt any one who entices away his ſervant.

As if a man hire or retain my ſervant whilſt in my ſervice, and the ſervant depart from me, and ſerve the other, I may have an action for damages againſt both the maſter and the ſervant, or either of them, unleſs the maſter was ignorant of his being in my ſervice; and even then, if he refuſe to reſtore him after demand, the action is ſtill maintainable (*a*). *Fitz. Nat. Brev.* 167. *Hob.* 189. *Moor.* 187. *Cowp.* 54. 6 *Term Rep.* 221.

And ſo if, without any inticement, a ſervant leave his maſter without juſt cauſe, an action will lie againſt another who retains him with a knowledge of ſuch departure. 1 *Salk.* 380. 6 *Mod.* 99. 182. 289.

Alſo a maſter may aſſiſt his ſervant in ſupporting the expence of any action at law againſt a ſtranger, whereas in general it is an offence againſt public juſtice to encourage ſuits and animoſities by ſuch aſſiſtance. 1 *Roll. Abr.* 115.

The reaſon and foundation upon which all this doctrine is built, Sir W. Blackſtone obſerves, 1 *Com.* 429, ſeems to be the property which every man has in his domeſtics, acquired by the contract of hiring, and purchaſed by giving them wages.

2. The authority a maſter may exerciſe over his ſervant. 2. The authority of a maſter over his ſervant.

As the maſter is bound to pay wages to his domeſtics, and owes them alſo protection, ſo in return he has a right to expect and to exact of his ſervants fidelity and obedience in all his lawful commands; and to enforce this, the law allows a maſter to correct his ſervant in a reaſonable and proper manner, either for abuſive language, neglect of duty, or other miſbehaviour.

(*a*) And the ſame holds in regard to a daughter (whether under or above the age of 21 years) if living with her parents, who for the purpoſe of enabling the father to puniſh one who may barbarouſly entice her to leave her home, the law conſiders as a ſervant, and gives the father an action againſt the ſeducer to recover damages for the loſs of her ſervice, and any act of ſervice, however trifling, is deemed ſufficient. 3 *Bur.* 1878. 3 *Wilſ.* 18. 2 *Term Rep.* 166.

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Correcting servants.

But though a master may chastise his servant himself, he cannot delegate that power to another. 9 *Co.* 76. 2 *Mod.* 107.

And the correction of a master must be in all respects moderate and reasonable, for if the master design an immoderate chastisement, either in respect of the measure, the manner, or the instrument, he will be answerable, and if the servant die, it will, if done with deliberation and forethought, be murder, and if passionately and without deliberation, manslaughter. *Hale P. C.* 454. 1 *Haw. Pl. C.* 73. 5 *Mod.* 287.

And this correction must be in order to enforce the just and lawful commands of the master, and not otherwise. For he is neither justified in giving nor is a servant by any means allowed to commit any the lowest species of crime, by the command or even by the coertion of his master. *Bul. Ni. Pri.* 18, 4 *Wms. Just.* 145.

But as in defence of his master a servant may justify assaulting another; and though death should ensue it is not murder, it is presumed, that a master may demand the aid of his servant, in case of any unlawful attack upon his person or property.

The above positions, however, relating to the correction which a master is permitted by the laws of England, to give to his servants, (however generally laid down in the books) must it is conceived be confined to servants under the age of twenty-one years, and not to those above that age. See 1 *Blac. Rep.* 428. Though in cases of high provocation by a servant of full age a master is so far considered by a jury to be justified in striking him that no other than 1s. damages are in general awarded.

III. *As to the Acts of the Servant, for which the Master is answerable.*

The acts of servants for which the master is answerable.

The acts of a servant are in many instances deemed the acts of the master which arises from the relation which exists between a master and servant, for as in strictness every body ought to transact his own affairs, and it is by the favor and indulgence of the law that he can delegate the power of acting for him to another, it is highly reasonable that he should answer for such substitute, and that his acts being pursuant to the authority given him, should be deemed the acts of his master. 4 *Bac. Abr.* 683.

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It is a rule of law, therefore, that when a man commands another either expreſsly, or by implication, to do any act, he ſhall be conſiderd as having done it himſelf.

If, therefore, a ſervant commit an act of treſpaſs by command, or encouragement of his maſter, the maſter will be anſwerable. 1 *Black. Com.* 429. But in this caſe the ſervant himſelf is not excuſed, as he is bound to obey his maſter in ſuch things only, we have ſeen, as are honeſt and lawful.

So if the ſervant of an innkeeper rob his maſter's gueſt, the maſter is bound to make good the loſs, for as there is a confidence repoſed in his providing honeſt ſervants, his negligence in this reſpect is conſidered as an implied conſent to the robbery. *Nay Max.* 109.

And the ſame is alſo law, and on a like principle of negligence in the hoſt, if the property of the gueſt be ſtolen by any other perſon than his ſervant, unleſs it be done by the ſervant or companion of the gueſt himſelf. 3 *Co.* 33.

So alſo if the drawer or waiter at an inn ſell a man bad wine by which his health is impaired, an action will lie againſt the maſter; for though he might not expreſsly order the ſervant to ſell it to that perſon in particular, yet his permitting him to ſell it at all, to any body, is deemed an implied general command. 1 *Roll. Abr.* 95. 1 *Black. Com.* 430.

In like manner, if a ſervant be frequently permitted to do a thing by the tacit conſent of the maſter, the maſter will be liable, as ſuch permiſſion is equivalent to a general command.

If therefore I pay money to the ſervant of a banker, and he embezzle it, the banker is anſwerable, but otherwiſe, if I pay it to the ſervant of a phyſician, whoſe proper buſineſs is not to receive money for his maſter. 1 *Black. Com.* 430.

Contracts of ſervants.

Alſo the acts of a ſervant are deemed the acts of his maſter in dealing and contracting for his maſter concerning matters in which he has been entruſted with ſuch authority. As if a ſervant ſell a piece of cloth, or the like, warranting it to be good, and it proves to be damaged, an action lies againſt the maſter. 4 *Bac. Abr.* 583.

And ſo, if I uſually ſend my ſervant upon truſt with my tradeſmen, and he take goods in my name, upon his

SERVANTS. own account, I muſt pay for them *(a)*; and ſo, likewiſe, it would be were I to ſend him ſometimes on truſt, and ſometimes with ready money, for it is not poſſible for the tradeſman to know when he comes by my order, and when by his own authority, or when with, and when without the money. 1 *Show.* 95. *Nov. Max.* 111, 1 *Stra.* 506.

But if I uſually deal with my tradeſman myſelf, or conſtantly pay him ready money, I am not chargeable with what my ſervant may take up in my name; for in this caſe there is not, as in the other, any implied order to truſt him. *Dr. & Stud.* chap. 42. *Show.* 95.

Or if the maſter never had any perſonal dealings with the tradeſman, but the contracts have always been between the ſervant and the tradeſman, and the maſter has regularly given his ſervant money for payment of every thing had on his account. In this caſe the maſter ſhall not be charged. *Eſp. N. Pri.* 115.

Or if I forbid my tradeſman to truſt my ſervant on my ſcore, and he ſtills buys upon credit, I am not liable. 1 *Brownl.* 64. *Show.* 95.

And by tranſacting affairs for his maſter, a ſervant derives a general authority and credit which cannot be determined for a time, by any particular orders or inſtructions, to which none but the maſter and ſervant are privy; for if that doctrine were to prevail, no one could deal with ſafety with any but the maſter himſelf, which would be extremely detrimental to commerce and to general convenience.

Therefore the act of a ſervant, though out of place, was held to be binding upon the maſter by reaſon of the former credit given him on his maſter's account, it not being known to the party truſting that he was diſcharged. 4 *Bac. Abr.* 586.

Negligence of ſervants. The maſter is alſo anſwerable for any injury ariſing by the fault or neglect of his ſervant when executing his maſter's buſineſs; as, where a gentleman's ſervant

(a) And it is the ſame in reſpect of a wife, relation, or other perſon, who has been uſed to act for another, they being deemed in reſpect of thoſe individual tranſactions, as the ſervants of their employers; and were it not ſo, no mutual intercourſe could ſubſiſt between man and man with any tolerable convenience.

brought a coach and two ungovernable horſes of his maſter's into Lincoln's-Inn-fields, in order to break them in, and they from the careleſſneſs of the driver ran over a paſſenger, it was held that an action brought againſt the maſter, as well as the ſervant, was good. 3 *Keb.* 65. 1 *Vent.* 295. And ſo in like caſes. 1 *Ld. Raym.* 264. 375. 739. 6 *Term Rep.* 659.

But, where in caſes like the above there has been no neglect or other fault in the ſervant, the maſter is not liable. *Eſp. Rep.* 533.

So where a pawnbroker's ſervant took a pledge, and refuſed to deliver it on tender of the redemption money, the maſter was made to produce it. 2 *Salk* 441.

And if a ſmith's ſervant lame a horſe whilſt ſhoeing him, or the ſervant of a ſurgeon make the wound worſe, in both theſe caſes an action for damages will lie againſt the maſter, and not againſt the ſervant. 1 *Black. Com.* 431.

But it is to be obſerved, that, in all the above caſes, the damage, &c. muſt be done whilſt the ſervant is actually employed in his maſter's ſervice, otherwiſe he is liable to anſwer for his own miſbehaviour or neglect.

And to make the maſter liable, it is likewiſe eſſential, that the ſervant be about the proper buſineſs of his maſter, and acting within the authority actually or impliedly delegated to him, for if the maſter, for inſtance, order his ſervant to do one thing, and the ſervant exceed his orders and does another, the ſervant alone ſhall be anſwerable for his own acts. For otherwiſe it would be in the power of every ſervant to ſubject his maſter to what actions or penalties he pleaſed. *Skin.* 228.

Fire occaſioned by ſervants.

Formerly the maſter was anſwerable for any damage occaſioned to his neighbours, by any fire occaſioned by the negligence of his ſervant; but, the law is now altered in this reſpect, by 6 Ann. chap. 31 ſec. 3, which protects the maſter from an action for damages, by enacting that no action ſhall be maintained againſt any in whoſe houſe, or chamber, any fire ſhall accidentally begin; the loſs of the maſter being in ſuch caſe deemed a ſufficient puniſhment for his own or ſervant's careleſſneſs.

But by 14 Geo. 3. chap. 78. if a fire happen through the negligence of any ſervant (whoſe loſs is generally very inconſiderable,) he ſhall forfeit 100l. to be diſtributed amongſt the ſufferers, or be committed to a workhouſe for the ſpace of 18 months.

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A master is likewise chargeable if his servant cast any dirt, &c. out of the house into the common street, and so for any other nuisance occasioned by his servant, to the damage or annoyance of any individual, or the common nuisance of his majesty's people. *Noy Max.* 111. 1 *Ld. Raym.* 264.

The master being as we have already seen, responsible for all acts done by his servant in the course of his business, even though he has no express command from his master for the purpose.

Remarks.

Upon the above cases it is remarked by Sir W. Blackstone, that though the master, as appears from the cases we have adduced, may frequently be a loser by the trust reposed in his servant, he never can be a gainer; he may frequently be answerable for his servant's misbehavior, but never can shelter himself from punishment by laying the blame on his agent, the reason of which is, that the wrong done by the servant is looked upon in law as the wrong of the master himself, and it is a standing maxim, that no man shall be allowed to take advantage of his own wrong; and hard as this rule of law may be sometimes on an innocent individual, the reader will perceive it to be founded upon principles of public policy and utility, and has a tendency to make masters careful in the choice of their servants, and consequently servants tenacious of a good character; by which many injuries to society and to themselves are not unfrequently prevented. See 1 *Com.* 429.

This observation, however, does not seem to be strictly correct, to the full extent to which it appears to go, for it seems that a master shall have the benefit of his servant's contracts in like manner as he shall be bound by them, at least in respect to such matters as come within his compass as a servant. Thus where a servant was sent by his master to a debtor to see what was due on the debtor's account; and the promise was made to the servant to pay what appeared to be due upon the balance. It was held that the master might maintain an action in his own name on this promise to his servant. *Godb.* 360.

Likewise if a servant be robbed of his master's money, though it be in the absence of his master, the master may maintain an action against the hundred for it. 4 *Bac. Abr.* 583.

And so, where a clerk had paid away notes in insuring lottery tickets, (contrary to 12 Geo. 3.) he had embez-

zled from his master, it was held that they might be recovered back by the master. *Comp.* 197.

IV. *The Acts for which Servants are answerable to their Masters.*

1. In a civil action.

Servants not answerable for accidents, but are for neglect.

A servant is not answerable to his master for any loss which may happen without his wilful neglect, but if he be guilty of fraud or gross negligence, an action will lie against him by his master.

Therefore, If a master give money to his servant to carry to such a place, and he is robbed, the servant shall not be answerable, for a servant undertakes only for his diligence and fidelity, and not for the strength and security of his defence; he is not therefore obliged to preserve his master's property at all events; and in this the law observes a difference between a servant and another person, for every other person has properly no other care than of his own concerns, and is not bound in point of duty to defend or intermeddle with the property of another. If therefore, he officiously create to himself such an undertaking, he is obliged to make good the loss if any happen. But a servant is under the command of his master, and bound, if desired, to charge himself with his master's affairs: now the contract by which he becomes a servant, implies no more, as we have said, than an undertaking for obedience, care, and fidelity; and whenever he afterwards engages in the concerns of his master, it is in consequence of that contract, and can extend no farther than that implies, he consequently cannot in reason be answerable for any unavoidable accident, arising from no want of care or faithfulness in him. See 4 *Bac. Abr.* 588.

But if he do any thing fraudulently, or is guilty of gross neglect or disobedience, it is otherwise.

As, if a servant, driving his master's cattle, suffer them to perish for want of due attention to them, the master may have an action on the case against him. *Ibid.* 589.

And so if a man deliver a horse to his servant to take to market, or money to pay to another, and he neglects to do it, his master may have an action of account or detinue against him. *Moor.* 248.

And so of similar cases. See 1 *Sid.* 298. 1 *Lev.* 188 2 *Keb.* 88. *Ca. Law & Eq.* 109.

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2. In a criminal profecution.

Servants defrauding their maſters of goods, &c.

Having ſeen in what caſes a *civil* action may be had by a maſter againſt his ſervant, it will now be proper to obſerve upon the *criminal* acts for which a proſecution will lie againſt ſervants, in relation to their maſters.

By the common law, a ſervant (even though under age) was guilty of felony in taking away the goods, &c. of his maſter, though the goods, &c. were under the immediate charge of the ſervant, (and may ſtill be indicted for ſuch offence at common law, if felonioufly committed,) ſee poſt note *(a)*; if, however, any particular goods, &c. were expreſsly delivered to the ſervant by his maſter, to keep, or to carry to ſuch a place, and the ſervant converted them to his own uſe, it was conſidered as a breach of truſt only, and not felony; but now by ſtatute 21 Hen. 8. c. 7. it is enacted, that all ſervants to whom any caſkets, jewels, money, goods, or chattels, by their maſters or miſtreſſes ſhall from henceforth be delivered to keep, and who ſhall withdraw themſelves from their maſters or miſtreſſes, and go away with the ſaid goods, &c. or any part thereof, with an intent to ſteal the ſame contrary to the truſt and confidence in them placed; or ſhall, being in the ſervice of their maſters or miſtreſſes, embezzle the ſame caſkets, jewels, money, goods, or chattels, or any part thereof, without the aſſent of ſuch maſter or miſtreſs, or otherwiſe convert the ſame to their own uſe with like intent to ſteal, that then, if ſuch caſkets, jewels, money, goods, or chattels, be of the value of 40s. or upwards, the ſaid falſe, fraudulent, or untrue act of the ſervant ſhall henceforth be deemed and adjudged felony *(a)*. The ſaid act not to extend to apprentices, or to any perſons under the age of 18 years, who are to remain as before the paſſing thereof *(b)*.

(a) The felony by this ſtatute is *within benefit of clergy*, but the reader is to be apprized that by 12 Ann. ſtat. 1. c. 7. it is enacted, that *whoſoever* ſhall felonioufly ſteal money or goods to the value of 40s. or more, in any dwelling-houſe, or out-houſe thereto belonging, or ſhall aſſiſt or aid therein, *ſhall be debarred from benefit of clergy*. The act not to extend to apprentices under the age of fifteen, who ſhall rob their maſters.

(b) And therefore, though the ſtatute exempts an apprentice or ſervant under the age of 18 years from the

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Conſtruction of 21 Hen. 8. c. 7.

On this ſtatute it has been held,

1. That it extends to ſuch perſons only as were ſervants to the owners of the goods, both at the time they were committed to their care, and alſo at the time of their being ſtolen. 1 *Hawk. P. C.* 92.

2. That it extends to ſuch goods only as were expreſsly delivered to the ſervant to keep, &c. and that therefore a ſervant who embezzles rents, or other money, or who being entruſted to ſell goods, departs with the money, is not within the ſtatute. *Dyer*, 5 *pl.* 2. 3 *Inſt.* 105. 1 *Hawk. P. C.* 92.

But it has likewiſe been held, that if a ſervant to whom goods are delivered to keep, receive them from the wife of his maſter, or from another ſervant, it is as much felony as if he had them from his maſter's own hands; for a delivery by the order of the maſter is the ſame as a delivery by the maſter. 4 *Bac. Abr.* 590. 1 *Hale, C.* 668.

3. That it does not extend to the taking of any thing of which the actual property is not in the maſter at the time. See *Dalt.* chap. 102. *Cromp.* 50. 1 *Hawk. P. C.* 92.

4. That the ſtatute does not extend to the waſting or conſuming of goods, however wilfully it may be done: nor to the embezzlement of a bond or any other choſe in action. 1 *Hawk. P. C.* 92.

And by 15 Geo. 2. chap. 12. any officer or ſervant of the Bank of England, ſecreting or embezzling any note, bill, dividend, warrant, bond, deed, or any ſecurity or effects of the ſaid company, he ſhall ſuffer death without benefit of clergy.

And by 5 Geo. 3. c. 35. and 7 ibid. c. 50. if any perſons employed in any buſineſs relating to the poſt-office, ſhall ſecrete, embezzle, or deſtroy any letter, packet, or bag of letters, containing a note, bill, draft, or other ſecurity for money, or ſhall ſteal or take any ſuch out of any letter or packet, he ſhall ſuffer death without benefit of clergy. *And ſee further relative to embezzlement by manufacturers, poſt. chap. iii. ſec. vi.*

And indeed it ſeems that in every caſe the judges now determine, that the property delivered by a maſter into

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charge of felony by this act, viz. where goods, &c. are delivered to him, yet it ſtill leaves him open to any felony at common law, the ſame as if he were not exempted here. See 1 *Hale, H. C. L.* 668.

SERVANTS. the cuſtody of his ſervant, is to be conſidered as remaining in the maſter's poſſeſſion, and if embezzled by the ſervant, or converted to his uſe, he is guilty of felony; and when ſervants are convicted of robbing their maſters, as the ſecurity of families ſo much depends upon their honeſty, and as the violation of the confidence repoſed in them is a high aggravation of the crime, they are now always puniſhed with the utmoſt rigour that the law admits. 4 *Blac. Com.* 230. n. (3).

V. *Of the giving falſe Characters with Servants.*

To check the pernicious practice of giving falſe characters with ſervants, which has frequently proved of the moſt ſerious conſequence to families, it is enacted by 32 Geo. 3. chap. 56. that if any perſon ſhall falſely perſonate any maſter or miſtreſs, or the executor, adminiſtrator, wife, relation, houſekeeper, ſteward, agent, or ſervant of any ſuch maſter or miſtreſs, and ſhall either perſonally, or in writing, give any falſe, forged, or counterfeited character to any perſon offering him or herſelf to be hired as a ſervant, into the ſervice of any perſon;

Or if any perſon ſhall pretend or aſſert in writing, that any ſervant had been hired for any period of time, or in any ſtation other than the true one; or that any ſervant was diſcharged or left his ſervice at any other time than the true one, or that ſuch ſervant had not been hired in any previous ſervice, contrary to the truth;

Or if any perſon ſhall offer him or herſelf for a ſervant, pretending to have ſerved in any ſervice contrary to the truth, or with a falſe, forged, or counterfeited certificate of character, or ſhall in any wiſe add to or alter, efface, or eraſe any word, date, matter, or thing, in any certificate given to him by a former maſter, or perſon by him authorized to give the ſame; or having before been in ſervice, ſhall pretend not to have been in any previous ſervice;

Such perſons ſo offending and convicted thereof by the oath of one witneſs, (and the informer ſhall be deemed a good witneſs) before two juſtices, ſhall forfeit 20l. one half to go to the perſon informing, and the other half to the poor of the pariſh, or committed to the houſe of correction for not leſs than one month, nor more than ſix, or until the penalty be paid.

And in order to encourage ſervants, acting in this

wicked combination, to inform againſt each other, it is by the ſame ſtatute provided, that if any ſervant, who ſhall have been guilty of any of the ſaid offences, ſhall before information lodged againſt him, inform againſt any other concerned with him in any offence againſt this act, he ſhall be indemnified from the aforeſaid penalties. SERVANTS.

And moreover, it has been determined by Manſfield, Ch. J. that if a perſon knowingly gives a falſe character of any ſervant, he ſhall be liable to the amount of the loſs that another may ſuſtain in conſequence of having taken him upon ſuch character. *Sit. Trin. Term*, 1792.

And no action of defamation will lie againſt a maſter for words ſpoken, or a letter written by him, in giving a character of his ſervant, unleſs the ſervant can prove that ſuch character was not only falſe but malicious. 1 *Term Rep.* 110.

If however a bad character be given of a ſervant without juſt cauſe, and purely to defame, it is a juſt ground for an action. *Bul. Ni. Pri.* 8.

CHAP. II.

OF APPRENTICES.

AN apprentice is one who is bound by indenture for a certain term of years to another, in order to be taught the myſteries of his trade or profeſſion.

For the greater perſpicuity in treating of ſo extenſive and important a branch of our ſubject as that of apprentices, we ſhall diſtribute our matter into ſeveral diſtinct heads, and conſider

I. To what trades the neceſſity of ſerving an apprenticeſhip extends.

II. What perſons are capable of binding themſelves apprentice; and who are compellable to be bound apprentice.

III. Who are permitted to take apprentices; and who are compellable to take them.

IV. The mode of binding an apprentice; and the inrollment and duties of indentures of apprenticeſhip.

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V. The intereſt which a maſter has in the ſervice of his apprentice, and the authority he may exerciſe over him.

VI. Of miſbehaviour in apprentices, and miſconduct in their maſters.

VII. Of turning over, or aſſigning apprentices to other maſters; and

VIII. Of the death of the maſter, or his becoming a bankrupt, before the expiration of the apprentice's term.

I. *Of the Neceſſity of ſerving an Apprenticeſhip as a Qualification to practiſe a Trade or Profeſſion.*

The neceſſity of ſerving an apprenticeſhip to trades.

At the common law, every perſon was at liberty to follow whatever trade or profeſſion he choſe, without any previous tuition or apprenticeſhip; but this being found very miſchievous and detrimental to the public by frequently inducing people to exerciſe trades in which they had little or no experience or ſkill; and with a view of bringing up young perſons in the habits of application and induſtry, 11 *Co.* 54. 2 *Bulſ.* 191. It is enacted by 5 Eliz. c. 4. that it ſhall not be lawful for any perſon or perſons other than ſuch as then did lawfully exerciſe any art, myſtery, or manual occupation, to ſet up, uſe, or exerciſe any craft, myſtery, or manual occupation *then* uſed within the realm of England or Wales, except he ſhall have been brought up therein *ſeven* years at the leaſt, as an apprentice, according to that ſtatute: or elſe having ſerved as an apprentice as aforeſaid, ſhall become a journeyman, or hired by the year, upon fine that every perſon wilfully offending ſhall forfeit 40s. per month, half to the king, and half to the proſecutor.

But by 6 and 7 Will. chap. 17. it is provided, that any apprentice who ſhall diſcover two offenders guilty of coining, ſo as that they may be convicted, he ſhall be deemed a freeman, and exerciſe his trade without moleſtation, as if he had ſerved his full time.

And by 3 Geo. 3. chap. 8. it is enacted, that any officer, mariner, or ſoldier, who has been employed in his majeſty's ſervice, and not deſerted, may lawfully exerciſe any trade he may be fit for, without ſerving an apprenticeſhip thereto.

In expounding the ſtatute of 5 Eliz. we ſhall conſider, 1. What the trades are to which it extends. 2. What

sort of following is intended by the ſtatute. 3. What kind of ſervice is deemed ſufficient within the ſaid act.

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The trades to which the ſtatute extends.

1. The trades enumerated in the above ſtatute, are thoſe of an

Arrow-head maker
Baker
Bowyer
Brewer
Bricklayer
Brickmaker
Burners of lime, and of oar and wood aſhes
Butcher
Capper
Carpenter
Clothier
Clothmaker
Clothworker
Cook
Cooper
Currier
Cutler
Draper
Dyer
Earthen Potter
Farrier
Feltmaker
Fletcher
Fuller
Glover
Goldſmith
Hatmaker
Hellier
Hoſier
Imbroiderer
Ironmonger
Limeburner
Linen-weaver
Maſon (rough)
Mercer
Merchant
Miller
Millwright
Pewterer
Plaiſterer
Ploughwright
Sadler
Sawyer
Sheerman
Shingler
Shoemaker
Slater
Smith
Spurrier
Tanner
Taylor
Thatcher
Tile maker
Tucker (i. e. Turner)
Weaver (of linen and woollen cloth)
Wheelwright

But it has been determined that there are many trades within the equity and general verds of the ſtatute, beſides thoſe particularly ſpecified. 1 *Salk.* 61. though it muſt be ſome trade which was exerciſed at or prior to the paſſing of the act. *Palm.* 528. 1 *Sid.* 175. and not any art or myſtery ſince invented. 1 *Rol. Rep.* 10. 1 *Vent.* 526, 546. but ſee 1 *Stra.* 663. 2 *Ld. Raym.* 1410.

And this being a penal law, in derogation of the common law, and in reſtraint of that free and unlimited right which every man naturally has to exerciſe whatever trade he pleaſes, the courts have in proſecutions on this ſtatute,

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always leaned as much as they could, in favour of the defendant; and it has been adjudged that it extends to ſuch trades, &c. only, as require ſkill and experience (a matter to be determined by the jury) the words of the ſtatute being *craft* or *myſtery*, 8 *Co.* 130. and that therefore a *merchant*, *huſbandman*, *gardener*, &c. are not within the ſtatute, nor a *hempdreſſer* (a). *Cro. Car.* 499.

But it is clearly agreed that the trades of a *brewer*, *baker*, or *cook*, are within the ſtatute, as unſkilfulneſs therein might be very injurious to the lives and healths of his majeſty's ſubjects; but a man may exerciſe any of them in his own houſe for the convenience of his family, &c. 11 *Co.* 54. *Hob.* 183, 211.

Sailcloth-maker.

And by 1 Jac. 1. chap. 24. no perſon ſhall exerciſe the trade of a *ſailclothmaker*, without having ſerved an apprenticeſhip of 7 years, on pain of forfeiting 20s. per month.

Silk-thrower.

Nor by 13 and 14 *Car.* 2. chap. 15. the trade of a *ſilkthrower*, on pain of 40s. per month.

Attornies, &c.

Further, by 2 Geo. 3. chap. 23. no perſon ſhall act as an *attorney* or *ſolicitor*, until he has ſerved a clerkſhip of 5 years to the profeſſion, and ſee *poſt.* p. 20.

2. What ſort of following is within the ſtatute.

2. As to what ſhall be deemed a following within this ſtatute.

It is held that the following a trade within the intent of this ſtatute, muſt be with a view to get a livelihood by it, and that therefore the uſing the trade of a brewer, baker, cook, taylor, and the like, in a private family, is no infringement upon the ſtatute. 11 *Co.* 24. *Hob.* 183.

But in a caſe where the defendant being a Turkey merchant, exported woollen manufactures, and employed clothiers (who had ſerved their apprenticeſhip) to work in his own houſe, and dyers to dye his cloths; he was held to be within the ſtatute, though the cloth was made for his own merchandize only, and by perſons properly qualified; for in this caſe it was ſaid, they were hireling ſervants, and not traders, he being the trader who received the profits: and theſe cloths were not confined to the uſe

(a) In 2 *Bulſ.* 190. it is ſaid to have been adjudged that an *upholſterer* is not within the ſtatute, but this was afterwards denied to be law. 2 *Lev.* 243. 1 *Sid.* 367. It has alſo been doubted, whether a huckſter, or applemonger, or a coſtermonger, or fruiterer, are within the ſtatute. See 2 *Bulſt.* 190. 2 *Lev.* 206. 1 *Vent.* 326, 346.

of the defendant's family, but employed in commerce; and whether they were vended in England or in Turkey, was immaterial. 2 *Salk.* 610.

And if a coachmaker keeps wheelwrights to make his wheels, curriers to dreſs his leather, &c. it is againſt the ſtatute, for it is the coachmaker who receives the profits of the ſeveral trades, and the workmen are but his ſervants. *Carth.* 163.

And ſo where a man kept journeymen ſhoemakers to make ſhoes for exportation, it was reſolved to be exerciſing the trade of a ſhoemaker within the ſtatute. *Ibid.* 162.

But it has been adjudged that the mere entering into partnerſhip with a tradeſman and ſharing the profits, and ſtanding the riſks without perſonally interfering in the buſineſs, is not within the ſtatute. 1 *Bur.* 2.

Nor is a journeyman, who is not a tradeſman, but a ſervant; the act was meant to prevent maſters only from ſetting up trades without being qualified by a previous apprenticeſhip, or from employing others without ſuch qualification, but was never intended to extend to ſervants or journeymen employed in the trade. 4 *Bur.* 2450.

The ſtatute does not reſtrain a man from exerciſing as many trades together as he pleaſes, ſo that he has ſerved apprenticeſhip to them all, or otherwiſe exerciſed them for the term of 7 years. *Carth.* 163.

Therefore, when one who had been apprentice to, and for ſome time followed the trade of a glazier, afterwards exerciſed the trade of a carpenter for the ſpace of 9 years, it was objected, that, being originally bred up to the trade of a glazier he could not follow two trades, both glazier and carpenter; but *by the court* there is no law at this day againſt one man's following ſeveral trades; and without the leaſt doubt, a man may follow twenty trades if he has worked at or followed each trade ſeven years. 2 *Wilſ.* 168.

It was formerly doubted whether the ſtatute extended to villages in the country (ſee 3 *Bac. Abr.* 553.) and in Ball v. Cobus, 1 *Bur.* 367. it was moved that the information might be quaſhed, on the ground that the act was intended for the benefit of corporations only, and extended to no place leſs than a city, market town, or corporation; but per *Ld. Mansfield*, there is nothing in the act to reſtrain it to a city, market town, or corporation: and per *Foſter*, J.

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many trades are carried on entirely in villages, particularly the cloth trade in Yorkſhire.

3. What is deemed a ſufficient ſervice.

3. What is deemed a ſufficient ſervice within the ſtatute.

It is not neceſſary that a perſon ſhould have been actually bound apprentice in order to qualify him to ſet up a trade, for it has been held that the following or working at a trade for the term of 7 years, is a ſufficient qualification within the intent of the ſtatute. 1 *Salk.* 67. 2 *Ibid.* 613.

And ſo where in an action brought upon this ſtatute, it appeared that the defendant had for 7 years and upwards been employed by his father in the trade, but had never been bound apprentice, he was adjudged ſufficiently qualified within the ſtatute. *Carth.* 163.

And therefore, alſo, a wife who has lived with her huſband in the buſineſs for a term of 7 years, may continue to carry on the trade after his death, and likewiſe a ſecond huſband of ſuch woman, having been married to her for ſeven years, may go on with the trade after her deceaſe. *Ibid.* and *Ca. Law and Eq.* 70. *Bul. Ni. Pri.* 139.

And where a perſon has been employed ſeven years in a trade without exerciſing it, it matters not whether the perſon with whom he has ſo lived have a right to exerciſe the trade or not, for all that is requiſite is, that he be employed in it for a term of 7 years. *Ibid.*

And ſuch ſervice or employment need not have been within the realm, it may have been partly in England, and partly elſewhere, or wholly elſewhere. 3 *Keb.* 550. *Ca. Law and Eq.* 70. 1 *Salk.* 67.

Attornies, &c.

And in reſpect to articled clerks to attornies or ſolicitors, it is enacted, 22 Geo. 2. chap. 46. that they ſhall, during the whole time of ſervice ſpecified in the contract (which by 2 Geo. 3. chap. 23. ſhall be for the ſpace of 5 years at the leaſt, ſee ante p. 18.) continue and be actually employed by ſuch attorney or ſolicitor, or his agent, in the proper buſineſs of an attorney or ſolicitor, and ſee 1 *Bur.* 291.

And by a rule of the Court of *King's Bench, Trin. Term,* 21 Geo. 3. no clerk ſhall ſerve the agent of ſuch attorney longer than during *one* year of his clerkſhip, ſee 1 *Term Rep.* 379.

And on the conſtruction of the above ſtat. of 22 Geo. 3. it has been determined, that the act muſt be ſtrictly and rigidly complied with; and therefore, if he ſerve but a

ſmall portion of his time with another attorney or ſolicitor, and that with the expreſs conſent of his maſter, it is not a ſufficient ſerving under the ſtatute. 7 *Term Rep.* 456.

II. *What Perſons are capable of binding themſelves Apprentice, and what Perſons are compellable to be bound.*

1. Who may bind himſelf apprentice.

1. Perſons capable of binding themſelves apprentice.

Any perſon, even an infant, under the age of 21 years, may bind himſelf apprentice, till he complete that age, it being a contract for benefit. *Bur. Set. Ca.* 770. 6 *Term Rep.* 558.

Yet by the common law, perſons under the age of 21 years cannot bind themſelves in ſuch a manner as to entitle their maſter to an action for breach of the articles, or for departing his ſervice, which makes it proper, according to the uſual practice, for the father or ſome other friend of the apprentice, to engage for the faithful diſcharge of his duty for the term agreed upon. 11 *Co.* 89. 3 *Bac. Abr.* 547.

Unleſs by the cuſtom of London, where an infant, unmarried, and above the age of 14 years, may bind himſelf apprentice to a freeman of London by indenture and covenants, which will be as binding as if he were of full age. *Moor* 134. 1 *Mod.* 271. 2 *Bulſt.* 192.

On account of the inconvenience ariſing from infants not being at common law bound by their indentures, the act of 5 Eliz. chap. 4. provides that all perſons who ſhall thereafter be bound by indenture to ſerve as an apprentice, in any art, ſcience, occupation, or labour, although he ſhall be within the age of 21 years at the time of entering into ſuch apprenticeſhip, ſhall nevertheleſs be obliged to ſerve for the term in ſaid indentures ſpecified, as amply and largely, to every intent, as if the ſame apprentices were of full age at the time of making ſuch indentures.

But notwithſtanding this ſtatute, it has been adjudged that, no action of *covenant* is maintainable againſt an apprentice for leaving his maſter's ſervice without leave, for though an infant under 21 may bind himſelf an apprentice, and by continuing ſuch for 7 years is qualified to follow his trade, yet, neither by this ſtatute, nor by the common law, will a covenant or obligation bind him ſo as to ſubject him to an action. *Cro. Car.* 179. *Cro. Jac.* 494.

If, however, the father or other friend of the apprentice, is made a party to the indenture, the maſter may have an action of covenant againſt ſuch perſon for any breach

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of the articles by the apprentice. 8 *Mod.* 191. 2 *Doug.* 518.

But though an infant apprentice is not bound by his indenture so as to have an action brought against him, yet it has been held that he may be compelled (under this statute it is presumed) to continue his service till the expiration of his term, so that it do not extend beyond the age of 21 years; for when an apprentice ran away from his master for the purpose of avoiding his indenture on the ground of its having been entered into during his minority, he was remanded back by the court of King's Bench, on appeal from the justices. *Cald.* 26. and see *Bur. Set. Ca.* 441. 6 *Term Rep.* 558.

In a later case, however, it was clearly held that infants cannot be bound by their indentures beyond the age of 21 years, but may dissent from them, when they arrive at that age; for per *Kenyon*, C. J. every indenture of an infant is void at his election; and in such cases the master must trust to the covenant of those who engage for the infant. 5 *Term Rep.* 715. 6 *Ibid.* 715. This observation, however, is not, it is apprehended, to be understood to apply to the case of infants *during their minority*, for though they may avoid their indenture upon attaining the age of 21 years, even though their term be not expired, yet such indentures are not voidable by them before that age. See *Bur. Set. Ca.* 441. 6 *Term Rep.* 558.

And the mere act of leaving the master even after the age of 21 years, it has been determined is not of itself an avoidance of the indentures without any other indication of such intention. 6 *Term Rep.* 652.

2. Persons compellable to be bound apprentice.

2. Who are compellable to be bound apprentice.

By the beforementioned statute of 5 Eliz. chap. 4. it is also further enacted that every person *under the age of* 21 *years*, who shall be required by any householder using half a plough land in tillage, to be an apprentice in husbandry, or other art or mystery, or science, before expressed, he shall be compellable thereto, and if he refuse, upon complaint of such householder made to the justice, or to the mayor, bailiff, or head officer; and such justice, &c. shall think the person meet to serve, he may be committed unto ward, there to remain until he be contented, and will be bound to serve as an apprentice.

And by 43 Eliz. chap. 2. it shall be lawful for the church wardens and overseers of the poor by the assent of

two juſtices, to bind ſuch poor children, whoſe parents they ſhall judge not able to maintain them, apprentices, where they ſhall ſee convenient, till ſuch child, being a boy (by 18 Geo. 3. chap. 47), ſhall attain the age of 21 years; and being a girl, till that age, or marriage; and the ſame ſhall be as binding and effectual to every purpoſe, as if ſuch child were of full age, and by indenture of covenant bound him or herſelf *(a)*. APPRENTICES.

III. *Who are allowed to take Apprentices, and what number, and who are compellable to take them.*

1. Who may take apprentices. 1. Who allowed to take apprentices.

By 5 Eliz. chap. 4. ſec. 25. it is provided, for the benefit and encouragement of huſbandry, that every houſeholder uſing half a plough land *(b)* in tillage, may take as an apprentice, by indenture, any perſon between the age of 10 and 18 years, to ſerve in huſbandry, until ſuch perſon be of the age of 21 years at the leaſt, or of 24 years, if the parties ſhall ſo agree. Huſbandmen.

And by the ſame act, ſec. 26. it is further provided, that every houſeholder being of the age of 24 years, dwelling in any city, town, corporation, or market town, and uſing any art, myſtery, or manual occupation there, may take the child of any freeman, (not occupying huſbandry, nor being a labourer), and inhabiting in any ſuch city, town, corporation, or market town, to ſerve and be bound as an apprentice, after the cuſtom of London, for ſeven years at the leaſt, ſo that the term of ſuch apprentice do not expire before he be of the age of 24 years. Tradeſmen in cities and towns.

And further, ſec. 30. it ſhall be lawful for any *ſmith*, *wheelwright*, *ploughwright*, millwright, carpenter, roughmaſon, plaiſterer, ſawyer, limeburner, brickmaker, bricklayer, tiler, ſlater, helier, tilemaker, linenweaver, turner, cooper, miller, earthen-potter, woollen-weaver, (weaving houſewives, or woollen cloth only), fuller, Tradeſmen in other places.

(a) For the office and authority of churchwardens and overſeers of the poor, to bind out poor apprentices, ſee that diviſion of our "LAW SELECTIONS," which is entitled the "LAWS RESPECTING PARISH MATTERS."

(b) A plough land is the ſame as a hide of land, it contains no certain quantity, but in reſpect of repairing the highways it was by 7 & 8 Will. 3. chap. 29. ſettled at 50l. per ann.

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burner of oar and wood-aſhes, thatcher, or ſhingler, *whereſoever he ſhall dwell*, to take the ſon of *any perſon* as an apprentice.

And all perſons, of *whatever trade*, ſeem now to be allowed the like privilege.

All indentures, covenants, promiſes, and bargains for taking or keeping of apprentices contrary to the ſaid act, are declared to be void *(a)*, and the offender to forfeit 10l. half to the king, and half to the proſecutor; or if a corporation, then according to the charter. But, the ſaid act ſhall in no wiſe extend to or controul the cities of London or Norwich.

Seamen.

And by 5 Eliz. chap. 5. every owner of a ſhip or veſſel, and every houſeholder exerciſing the trade of the ſeas, by fiſhing or otherwiſe, and every gunner, or cannoneer, and every ſhipwright, are allowed to take apprentices for the term of ten years, or under, and ſuch apprentices, being above the age of 7 years, ſhall be bound by their covenants, as by the cuſtom of *London*, ſo that the articles of apprenticeſhip are by indenture and duly enrolled.

Alſo by 1 Jac. 1. chap. 25. ſec. 21. *Ibid.* chap. 28. and 3 Car. 1. chap. 4. all perſons to whom the overſeers of the poor ſhall, agreeably to 43 Eliz. bind any children apprentices, may take and keep them as apprentices.

Attornies, &c.

Attornies and ſolicitors of his majeſty's courts are alſo allowed to take apprentices, (which as being chiefly employed in writing, are uſually called articled *clerks*).

But by 22 Geo. 2. chap. 46. No attorney or ſolicitor ſhall retain any clerk by contract in writing after he has diſcontinued buſineſs, nor during ſuch time as he ſhall not actually practiſe as an attorney or ſolicitor.

Nor by rule of C. K. B. *Trin. Term.* 31 Geo. 3. ſhall any attorney or ſolicitor employed as a writer or clerk by any other attorney or ſolicitor, take or have

(a) The ſtatute of 5 Eliz. appearing to favor huſbandry, corporations, and particular trades, more than the public at large, or trade and manufactures in general, every latitude has been allowed in the conſtruction of it which could ſafely be admitted; and on this part of the ſtatute it has been held that indentures made contrary to the act, are not abſolutely void, but only voidable by the parties themſelves, if they chuſe to take advantage of the irregularity. *Bur. Set. Ca.* 91.

during such employ any clerk under articles. See 4 *Term Rep.* 379. APPRENTICES.

2. The number of apprentices allowed to be kept at one time. 2. Number of apprentices.

By 1 Jac. 1. chap. 17. sec. 3. 5. it is provided, that no *hatmaker* shall have above *two* apprentices at one time, nor those for any less term than 7 years, on pain of 5l. a month, half to the king, and half to the prosecutor; the said act not to extend to a man's own son, in his own house, so as he be bound by indenture for 7 years, and his term do not expire before he be twenty-two years of age.

And by 13 and 14 Car. 2. chap. 5. sec. 18. no *weaver* of stuffs in *Norfolk* and *Norwich* shall have above *two* apprentices, in the said trade, on pain of 5l. a month to the king.

But clothmakers, fullers, sheermen, weavers, taylors, and shoemakers, it should seem may each have *three* apprentices at one time, for by 5 Eliz. chap. 4. sec. 45. it is enacted that every such person having *three* apprentices, shall keep one journeyman, and also one other journeyman for every other apprentice above three, on penalty of 10l.

And by 17 Geo. 3. chap. 55. every master hatmaker shall employ one journeyman for every apprentice, and in default thereof shall be disabled from taking more than *two* apprentices.

And by 28 Geo. 3. chap. 48. no *chimney-sweeper* shall have more than *six* apprentices at one time on forfeiture of not more than 10l. nor less than 5l.

And by 2 Geo. 2. chap. 23. no *attorney* or *solicitor*, shall have more than *two* articled clerks at one time, except the *prothonotories* of the courts of common pleas, and of the counties palatine, and great sessions in Wales, and *secondaries* of the court of King's Bench, who may have *three* such clerks. Attornies, &c.

But a bye-law made by a company in a corporation to restrain the number of apprentices to be taken by any of the members, it has been held is void, as being in restraint of trade. 7 *Term Rep.* 543.

3. Who are compellable to take apprentices. 3. Who compellable to take apprentices.

We have seen that by 43 Eliz. chap. 2. churchwardens and overseers of the poor are authorized by the assent of two justices, to bind out poor children as apprentices, and as they may put them out, those to whom they are put may consequently be compelled to receive them. 1 *Salk.* 67.

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And by 8 and 9 Will. 3. chap. 30. where any poor children ſhall be appointed to be bound apprentice, purſuant to the act of 43 Eliz. the perſon to whom they are ſo appointed ſhall receive and provide for them according to the indenture, and on refuſing ſo to do, he ſhall forfeit 10l. to be levied by diſtreſs and ſale,—with liberty of appeal to the quarter ſeſſions.

And by 20 Geo. 3. chap. 36. it is enacted, that the perſons to whom any poor children ſhall be appointed to be bound apprentice in purſuance of any act made for the relief of the poor, in *any particular incorporated hundreds*, or diſtricts, ſuch perſons ſhall be compellable to receive and provide for ſuch children according to the indentures executed by the directors or acting guardians of the poor of thoſe places, *in like manner* as perſons are obliged to receive and provide for poor children appointed there by churchwardens and overſeers, under a like penalty of 10l.

On theſe ſtatutes it has been determined (notwithſtanding a clauſe in the latter that it ſhall not extend to any but inhabitants and occupiers of land in the pariſh) that though a perſon is not reſident in the pariſh, yet, if he occupy lands in the pariſh, he is compellable to receive a pariſh apprentice; for, by *Kenyon*, C. J. the general object of theſe acts is to compel all thoſe who have any property in the pariſh to contribute their due proportion towards the maintenance of the poor; and the receiving apprentices is one mode of doing this. 3 *Term Rep.* 107. *Ibid.* 523.

And where ſeveral perſons hold land in partnerſhip, ſome of whom actually reſide upon and occupy it, and others reſide at a diſtance in another pariſh; the latter as well as the former are compellable to take pariſh apprentices if in other reſpects they are fit perſons to take them. 7 *Term Rep.* 33.

Alſo by 2 and 3 Ann. chap. 16. ſec. 8. all maſters and owners of ſhips of from 30 to 50 tons burthen ſhall be obliged to take one pariſh apprentice, and one more for the next 50 tons, and one more for every one hundred tons which ſuch ſhip ſhall exceed the burden of 100 tons; and ſuch maſter or owner refuſing to take ſuch apprentice ſhall forfeit 10l. for the uſe of the poor of the pariſh.

But no maſter ſhall be obliged to take any ſuch apprentice under the age of 13 years, or who ſhall not ap-

pear to be fitly qualified, both as to health and ſtrength of body for the purpoſe. APPRENTICES.

IV. *Of the Manner of binding Apprentices (a); and the Enrollment, and Duty of the Indentures.*

1. As to the manner of binding apprentices. 1. The manner of binding an apprentice.

Having ſeen to what trades an apprenticeſhip muſt be ſerved, who may bind themſelves, and who may take apprentices, we now proceed to ſhew in what manner an apprentice is to be bound.

And this muſt be (as directed by ſtat. 4 Eliz. chap. 4.) by indenture, that is by writing indented, or cut in a waiving line at the top, or ſide; and in the indenture he muſt be expreſsly mentioned as an *apprentice*, or elſe he is not, in law, an apprentice, though he be otherwiſe regularly bound. 1 *Seſſ. Caſes.* 222. 284. *Bur. Set. Ca.* 272. 290. (except by 31 Geo. 2. chap. 11. ſo far as to enable him to gain a ſettlement). And as he muſt be retained by deed, ſo he cannot, it is ſaid, be diſcharged but by deed. 2 *Ld. Raym.* 1117.

And it is further neceſſary that the apprentice be himſelf a party to, and ſign the indenture, as was determined 1 *Salk.* 479. Though it does not ſeem to be abſolutely *neceſſary* that the *maſter* ſhould ſign the indentures. *Cald. Ca.* 31. This however, if not abſolutely neceſſary, is in every reſpect extremely proper.

The indenture muſt alſo by 8 Ann. chap. 9. bear date on the day it is executed, and the money or other thing given or contracted for with an apprentice, muſt be inſerted in words at length, otherwiſe the maſter ſhall forfeit double the value of the ſum given.

And before an indenture of apprenticeſhip is given in evidence, the party on whoſe behalf it is produced, is required to make oath to the beſt of his knowledge, the ſum inſerted therein was really and truly all that was either directly or indirectly given or to be given with ſuch apprentice. *Ibid.* ſec. 43.

And in reſpect to apprentices to the ſea ſervice, it is Sea ſervice.

(a) As to the mode of binding *pariſh* apprentices by churchwardens and overſeers, and the regulations reſpecting them; ſee the diviſion of our work, entitled, "THE LAWS RESPECTING PARISH MATTERS."

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required by 2d and 3d Ann. chap. 6. that a counterpart of the indentures of ſuch apprentices turned over to the ſea ſervice under 43 Eliz. chap. 2. ſhall be atteſted by the collector at the port where ſuch apprentice ſhall be bound or turned over, and alſo by the conſtable or other officer bringing ſuch apprentice.

Chimney ſweepers.

And in regard to boys bound by any pariſh to the trade of a chimney-ſweeper under 28 Geo. 3. chap. 48. It is enacted that his age ſhall be inſerted in the indenture from the pariſh regiſter, and the ſame ſhall be atteſted by the miniſter, and if ſuch regiſter cannot be had the age ſhall be inſerted by a juſtice from the beſt information that can be got.

And further that the name and place of abode of the maſter of ſuch apprentices, ſhall be marked upon a braſs plate in the front of a leathern cap of the apprentice, under penalty of not leſs than 5l. nor more than 10l.

It would be unneceſſary to ſay that the maſter muſt be of the age of 21 years, only for the ſake of obſerving that though he be under that age, yet it has been determined that the indentures ſhall not, on that account, be abſolutely void, but only voidable at the inſtance of the parties, and the apprentice ſhall, if he ſerve his time, be nevertheleſs entitled to the benefit of his apprenticeſhip. 4 *Term Rep.* 198.

2. Enrollment, &c. of indentures.

2. Enrollment of the indentures.

By the cuſtom of London, and of ſome other places, it is neceſſary that indentures of apprenticeſhip ſhould be enrolled. In London, if they be not enrolled before the chamberlain within one year after the execution, and the omiſſion were by the fault of the maſter, the apprentice may ſue out his indentures and be diſcharged; but not if it were from his own fault, as, if he would not preſent himſelf before the chamberlain, for the indenture cannot be enrolled unleſs the apprentice acknowledge it in court. 2 *Roll. Abr.* 405. 1 *Mod.* 271.

Sea ſervice.

And by 2 and 3 Ann. chap. 6. regiſters are required to be kept by the collector of the cuſtoms of every ſea-port, of the names of all apprentices in ſhips belonging to ſuch port, and the pariſh from which they were ſent. And a copy thereof tranſmitted to the quarter ſeſſions, or to ſuch pariſh when required, on penalty of 5l.

And by the ſame act, every cuſtom-houſe officer ſhall inſert in their cocquets (without fee) the names and ages of

every apprentice going out in any ſhip; and alſo the dates of his indenture. APPRENTICES.

3. The duties upon indentures of apprenticeſhip.

3. Duty on indentures.

By the ſeveral acts of parliament relative to the ſtamp duties, it is enacted, that all indentures of apprenticeſhip (except of pariſh apprentices) ſhall be impreſſed with the ſtamp of a duty amounting to 7s. and without ſuch ſtamp the ſame ſhall not be admitted as evidence of the binding in any court of juſtice.

Pariſh apprentices.

But indentures of pariſh, or of charity children, ſhall be ſtamped with a *ſixpenny* ſtamp only.

Duty on the premium.

And beſides the above ſtamp duty it is provided by 8 Ann. chap. 9. that the duty of 6d. in the pound ſhall be paid for every ſum of 50l. or leſs, and *one ſhilling* per pound for every ſum above 50l. given with an apprentice, and proportionally for greater or leſs ſums; the ſame to be paid by the maſter; and if any thing not being money be given with an apprentice, the duty ſhall be eſtimated by the value of the thing ſo given or contracted for *(a)*.

And it is incumbent on the maſter to ſee that the indenture is properly ſtamped, (as well as that the premium is inſerted in the indenture) for otherwiſe, he cannot ſupport an action for the premium, ſhould it be neglected to be paid. 7 *Term Rep.* 121.

Pariſh apprentices.

The ſaid duties, however, are not to extend to any apprentice put out at the common charge of the pariſh, or at the expence of any public charity *(b)*.

And the ſaid indentures of apprenticeſhip, if executed within the bills of mortality, muſt be taken to the head

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(a) It was long a conteſted and doubtful queſtion under this clauſe of the act, whether the covenant of the apprentice's parent or friend to provide him with cloaths, &c. was not liable to valuation and payment of the duty, and the officers of the ſtamp office uſed to claim the duty upon ſuch covenant, till it was determined, *Trin. Term*, 32. of the preſent reign, that no duty was payable in reſpect of covenants for cloaths or maintenance. See 4 *Term Rep.* 732.

(b) And though the binding be voluntary, and not compulſory under 43 Eliz. chap. 2. if the money be paid at the public charge of the pariſh, or charity, it is not liable to the duty. 4 *Term Rep.* 196.

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ſtamp-office (now in *Somerſet-houſe* in the Strand), to be impreſſed with a ſtamp for that purpoſe, and the aforeſaid duties paid, within one month after the date of the indentures; and if executed elſewhere then the ſaid indentures are to be taken either to the ſaid head-office, or to a collector of the ſtamp-duties, out of the ſaid limits, within two months after date, and the duties thereon paid; and the collector is to indorſe thereon a receipt for the duties in words at length; and if it be within 50 miles of the bills of mortality, the ſaid indentures ſhall be taken to the head office, to be ſtamped as aforeſaid, within 3 months after date; and if above 50 miles, then within 6 months, otherwiſe the indentures ſhall be void, and not available to any purpoſe whatſoever. And ſee *Stra.* 903.

Penalty for neglect of payment,

And by 9 Ann. chap. 21. if the maſter ſhall neglect to pay the duty within the time limited, he ſhall forfeit 50l. half to the king, and half, with full coſts of ſuit, to him who ſhall ſue for the ſame. And, further, by 11 Geo. 2. chap. 22, if the ſaid duties and *penalties* ſhall be neglected to be paid as aforeſaid, he ſhall beſides all other penalties, forfeit double the ſaid duties.

And by 20 Geo. 2. chap. 45. if after the maſter has forfeited the double duty, the apprentice ſhall, in the preſence of one witneſs, or in writing under his hand, ſigned in the preſence of one witneſs, require his maſter to pay the ſame, and he ſhall not do it within 3 months, and ſuch apprentice ſhall, either before or within 2 years after the determination of his apprenticeſhip, pay ſuch duty, he may, within 3 months after ſuch payment, demand of his maſter double the ſum contracted for in his indenture, and may recover the ſame, unleſs paid within 3 months, by action at law. And if the time of ſuch apprentice ſhall not have expired when he ſhall pay ſuch duties, he ſhall (if he ſignify a deſire thereof to his maſter in writing under his hand) be diſcharged from his apprenticeſhip, and have the ſame benefit of the time he may have ſerved, as if he were aſſigned or turned over to a new maſter.

Alſo where any proſecution ſhall be commenced againſt the maſter for the above penalties, and the apprentice ſhall pay the double duty at any time within 2 years after the expiration of his apprenticeſhip, his indenture ſhall be valid, and may be given in evidence.

But by the ſame act, ſec. 5. it is provided, that if any maſter having forfeited the double duty, ſhall pay the ſame, and tender the indenture to be ſtamped within 2 years after the determination of the apprenticeſhip, *and before ſuit commenced for the penalties*, the indenture ſhall be valid, and the penalties diſcharged (*a*).

Articles of clerkſhip.

And further it is enacted by 34 Geo. 3. chap. 14. ſec. 1. that there ſhall be paid on every contract whereby any perſon ſhall become bound to ſerve as a clerk, in order to his admiſſion as a ſolicitor, or attorney, in any of the courts at *Weſtminſter*, the ſum of 100l. and in any of the courts of great ſeſſions in *Wales*, or counties palatine of *Cheſter*, *Lancaſter*, or *Durham*, or any court of record in *England*, (other than the courts at *Weſtminſter*) holding pleas to the amount of 40s. the ſum of 50l.

V. Concerning the Intereſt which a Maſter has in the Service of his Apprentice; and the Authority he may exerciſe over him.

1. The intereſt a maſter has in the ſervice of his apprentice.

1. The intereſt a maſter has in the ſervice of his apprentice.

The maſter has a right to the labour of his apprentice during the whole term of his apprenticeſhip, and therefore by 6 Geo. 3. chap. 25. it is provided, that if any apprentice, (with whom a ſum leſs than 10l. was given as a premium) ſhall abſent himſelf from his maſter's ſervice before the term of his apprenticeſhip ſhall be expired, ſuch apprentice ſhall, whenever he can be found, (unleſs it be 7 years ſince the term of his apprenticeſhip has expired) be compelled to return to and ſerve his maſter for ſo long a time as he ſhall have abſented himſelf, unleſs he ſhall make ſuch ſatisfaction to his maſter, for the loſs ſuſtained by his abſence, as a juſtice ſhall order; and ſo from time to time as often as any ſuch apprentice ſhall without leave abſent himſelf before the term of his contract be completed; and in caſe ſuch apprentice ſhall refuſe to

(*a*) After noticing theſe numerous and heavy penalties, it is fit we ſhould appriſe the reader that an indemnity act is uſually paſſed annually for the relief of perſons who have omitted to comply with the requiſitions of this and other penal acts of the like nature, provided they pay double duties, and in other reſpects comply with the act within a time therein ſpecified.

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ſerve, or to make ſatisfaction, he may be committed to a houſe of correction for a time not exceeding 3 months.

But the ſaid act not to leſſen the juriſdiction of the chamberlain of the city of London, or any court within the ſaid city.

And from the intereſt a maſter has in the ſervice of his apprentice, he may maintain an action againſt any one who may diſable him by an aſſault or other means. 4 *Bac. Abr.* 593.

As he alſo may againſt any one who may entice him away from his ſervice. *Ibid.* and 6 *Term Rep.* 497.

Whatever an apprentice may acquire before the expiration of his apprenticeſhip will alſo be the property of his maſter.

Therefore, where the widow of a waterman took an apprentice, who went to ſea and earned two tickets; the tickets were adjudged to his miſtreſs; for it was ſaid that whatever the apprentice gained, he gained to his maſter, and whether he was legally apprenticed or not, was immaterial, for it was enough if he was ſo in fact. 1 *Salk.* 68.

And it is a common caſe for maſters to recover the wages earned by runaway apprentices at ſea, from the parents or others who receive ſuch wages. 4 *Bac. Abr.* 583.

And in a caſe of ſingular hardſhip on the apprentice, the ſame rule of law was recognized by *Ld. Hardwicke*, 1 *Vez.* 83. In the caſe alluded to, the apprentice quitted his maſter's ſervice againſt his conſent, and went on board a privateer, which afterwards took a prize of which the apprentice's ſhare was 1200l. which ſum the maſter claimed, and upon a bill filed by the apprentice, his lordſhip ſaid, that in general, the maſter was entitled to all the apprentice might earn, and conſequently when he runs away and goes to a different buſineſs, the maſter is entitled at law to all his earnings, and in this caſe there is nothing in equity to relieve. But he ſaid he would ſend the caſe to be tried at law, unleſs the parties would agree to compound the matter, which he recommended to them, and thought, as the boy's ſhare of the prize amounted to ſo conſiderable a ſum, the balance ought to be in his favour.

2. The authority a maſter has over his apprentice.

2. The authority a maſter may exerciſe over his apprentice.

A maſter may correct and puniſh his apprentice in a *reaſonable manner*, for abuſive language, neglect of duty, or

other default; but he cannot justify maiming or wounding him for any cause; nor can he delegate the power of chastising him to any other. 4 *Bac. Abr.* 592. APPRENTICES.

But of this see more *ante* p. 5. relative to *menial servants*, concerning whom, and apprentices, the law is in this respect the same, except that the positions there laid down are applicable to apprentices of whatever age, whereas they apply to other servants only when under the age of one and twenty. Observation.

And by 28 Geo. 3. chap. 48. if any *chimney-sweeper* shall misuse his apprentice, he shall forfeit not more than 10l. nor less than 5l. Chimney-sweepers.

And (by the same act) no chimney-sweeper shall let out to hire, or lend his apprentice, under a like penalty.

Nor shall he cause his apprentice to call the streets before 7 in the morning, nor after 12 at noon, between *Michaelmas* and *Lady-day*, nor before 5 in the morning and 12 at noon between *Lady-day* and *Michaelmas*, without incurring the same penalty.

But the master cannot of his own authority discharge his apprentice, nor can the apprentice leave his master of his own accord; but if they cannot agree, they are to proceed as directed by the stat. 5 Eliz. chap. 4. or by that of 20 Geo. 2. chap. 19. which see in the next section. A master cannot discharge his apprentice.

VI. *Of the Misbehaviour of Apprentices, and of ill Treatment of them by their Masters.*

By 5 Eliz. chap. 4. it is enacted, that if any master shall misuse or ill treat his apprentice, or the apprentice do not do his duty to his master, the party having cause to complain, shall repair to a justice of the peace within the county, or the other head officer of the town or place, who shall determine as equity shall require; and if the parties will not comply, they may be required to appear at the sessions.

And by 20 Geo. 2. chap. 19. the justices, on complaint by any master or mistress, against such apprentice, concerning any misdemeanor, miscarriage, or ill behaviour, may punish the offender by commitment to the house of correction, for a term not exceeding three calendar months, or otherwise by discharging such apprentice.

And by 2 and 3 Ann. chap. 6. all complaints of ill

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uſage from the maſters to pariſh apprentices in the *ſea ſervice*, and alſo of ſuch as ſhall voluntarily put themſelves apprentice to the ſea ſervice, ſhall be inquired of and redreſſed by two juſtices near the port, or by the mayor, and other chief officers, or magiſtrates of any city or town near the port to which the ſhip ſhall arrive, as in other caſes between maſters and apprentices.

And by 32 Geo. 3. chap. 57. pariſh apprentices or others, upon whoſe binding not more than 5l. was paid, may upon complaint be diſcharged by two juſtices; and where any pariſh apprentice ſhall be ſo diſcharged, the juſtices may order the maſter or miſtreſs to deliver up his clothes, and alſo pay a ſum not exceeding 10l. to the pariſh for putting him out again; and moreover, may order the pariſh to proſecute ſuch maſter for any ill treatment to the ſaid apprentice.

And the above caſes extend not only to the indentures, &c. mentioned in the ſtat. of Eliz. but to all others, 2 *Ld. Raym.* 1410. *Stra.* 663. 1 *Wms. Juſt.* 162.

And as the juſtices may diſcharge an apprentice, ſo alſo may they within the equity of the ſtat. order a part of the premium to be refunded, to place him out with a new maſter. 1 *Wms. Juſt.* 167.

But as miſbehaviour or ill treatment are the only caſes mentioned in the ſtat. an apprentice cannot be diſcharged on account of illneſs, even though it be of ſuch a nature as to be deemed incurable. 1 *Stra.* 99.

But the maſter and apprentice may part by agreement with each other for that purpoſe; and where the maſter once gives leave under his hand for his apprentice's departure, he cannot afterwards recall it. 6 *Mod.* 182. 3 *Salk.* 42.

Further by 33 Geo. 3. c. 55. if *any* apprentice be ill uſed by his maſter, on whoſe binding not more than 10l. was paid, ſuch maſter may, by two juſtices at any ſeſſions, be fined a ſum not exceeding 40s.

And ſuch juſtices, on complaint by any maſter or miſtreſs, againſt ſuch apprentice, concerning any miſdemeanor, miſcarriage, or ill behaviour, may puniſh the offender by commitment to the houſe of correction, for a term not exceeding three calendar months, or otherwiſe by diſcharging ſuch apprentice.

VII. *Of aſſigning or turning over Apprentices to other Maſters.*

An apprentice's being placed out to a particular perſon is ſuppoſed to ariſe from the good opinion which is entertained of him, with whom he is placed, who is expected not only to inſtruct him in his trade, but alſo to be watchful over his health and ſafety; and therefore the law has conſidered it as ſuch a perſonal truſt and confidence, that the maſter cannot aſſign or transfer him over to another, neither can he ſend him abroad, though under pretence of improvement, (unleſs by expreſs agreement, or the nature of the buſineſs require, and imply ſuch a power, as that of a ſailor, &c.) for he muſt have him under his own care and inſpection. *Hob.* 134.

And agreeably to this doctrine it has been adjudged, that a ſurgeon's ſending his apprentice a voyage to the Eaſt Indies, though in company with other ſurgeons, and the better to inſtruct him in the art of ſurgery, was a breach of the covenant by which he bound himſelf to retain, keep, and employ the ſaid apprentice in his own houſe and ſervice. *Ibid.* 134.

And ſo 12 *Mod.* 441. a maſter cannot aſſign over his apprentice, as he may another chattel, but it muſt be with his own conſent; for the perſon of a man is not legally aſſignable. See alſo *Bur. Set. Ca.* 135.

But though an apprentice is not ſtrictly aſſignable, or transmiſſable, yet, per *Ld. Mansfield*, if he remain with the conſent of all parties, and his own, it is a continuance of the apprenticeſhip to the purpoſe of gaining a ſettlement.

And though a maſter cannot aſſign his apprentice ſo as to make him apprentice to his aſſignee, yet the aſſignment is not void, but is valid as a contract and agreement between the two maſters that the apprentice ſhall ſerve the remainder of his term with the ſecond, and ſo it is a ſervice *as* an apprentice. Per *Holt*, 1 *La. Raym.* 683.

And if the aſſignee of the apprentice doth not properly provide for him, he may compel his firſt maſter to do it; who will be entitled to his remedy over againſt the other. 1 *Stra.* 48.

By the cuſtom of London, however, a maſter being a

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freeman, may turn over his apprentice to another freeman, and such second master shall have the same benefit of the apprentice's covenant, as shall also the apprentice have of the covenants on the side of the master, as if he had been originally bound to him. *Mar.* 3. 1 *Keb.* 250.

And by 32 Geo. 3. chap. 57. after reciting that it frequently happens that persons are obliged under 8 and 9 Will. 3. chap. 30. to take a greater number of *parish* apprentices than it is convenient for them to employ, and are under the necessity of assigning them over; in order therefore that such assignments may be legally made under the control of the magistrates, it is enacted, that it shall be lawful for any master of any *parish apprentice*, upon the binding out of whom no more than 5l. shall have been paid, to assign, with the consent of two justices, by indorsement on the indenture of apprenticeship (which indorsement shall be without stamp) or by other instrument in writing, any such apprentice for the residue of the term, in such indenture agreed upon; provided the person to whom the apprentice shall be so assigned, shall, by indorsement on the counterpart of such indenture, or by writing under his hand, declare his acceptance of such apprentice, and acknowledge himself, his executors and administrators, to be bound in the covenants in the indenture, to be performed on the part of the master; and in such case the apprentice shall be deemed to be the apprentice of such subsequent master, and so from time to time as often as it shall be necessary or convenient for such subsequent master to part with such apprentice.

And by 2 and 3 Ann. chap. 6. sec. 6. every person to whom any poor parish boy shall be put apprentice under 43 Eliz. chap. 2. may with the approbation of two justices, or of the mayor or other chief officer of any city, borough, or town corporate, turn over, by indenture, duly registered as thereby directed, such apprentice to any *master of a ship* of 30 tons burthen and upwards, for the remaining time of his apprenticeship.

And by 4 Ann. chap. 19. if any master who has been obliged to take such apprentice shall die during the time, his widow, or his executor or administrator, may assign over such apprentice to any other master of a ship who has not his complement of apprentices.

As to the assignment of the apprentice to another, on the decease of the first master, see the next section.

VIII. *As to the Death of the Maſter, or his becoming a Bankrupt before the Expiration of the Term of Apprenticeſhip.*

1. As to the maſter's death.

1. The death of the maſter.

If a maſter be bound only to inſtruct an apprentice in a trade for a certain term of years, and die before the term end, the obligation is diſpenſed with; for as an apprenticeſhip is a perſonal truſt between the maſter and ſervant, it is determined by the death of either of them; and per *Eyre*, J. poſſibly the executor may be of another trade. 1 *Salk.* 66.

But if the maſter be bound further, as to find the apprentice with victuals and cloathing, in that caſe the death of the maſter is not a diſpenſation of the condition, but his executor will be obliged to fulfil it as far as they have aſſets; for per *Holt*, it would be very hard to conſtrue the death of the maſter to be a diſcharge of the covenants. *Ibid.*

But by the cuſtom of London, if the maſter die, his executor muſt place the apprentice with another maſter of the ſame trade, though the covenant be only for inſtruction. *Ibid.*

Cuſtom of London.

And in caſe of the maſter's death before the expiration of the apprenticeſhip, a court of equity will oblige his perſonal repreſentatives to reſtore a proportionable part of the fee, or premium, which was given with the apprentice; as, where the maſter received with his apprentice 25ol. and died within two years, during which time the apprentice had been employed in inferior matters but little conducive to his improvement in the buſineſs, the court of chancery decreed that the executors of the maſter ſhould (after payment of the ſpecialty debts) repay the ſaid 25ol. as a ſimple contract debt, deducting after the rate of 20l. per ann. for the apprentice's maintenance during the time he had been with his maſter. *Ca. Chan. Temp. Finch.* 296.

In the preceding ſection we have ſtated the law reſpecting the aſſignment of an apprentice by his maſter, it now behoves us to ſtate how the law ſtands in this reſpect upon the maſter's death.

Aſſignment of apprentice on maſter's death.

With the conſent of the apprentice, it is clear that the executors or adminiſtrators of his deceaſed maſter may

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assign him to another for the remainder of his term, but not without his consent, or there be some custom to the contrary; thus an award of *the justices* on the master's death that the apprentice should not be assigned to another, was adjudged to be void, unless there was a custom, or the apprentice concurred. Horne *v.* Blake, cited 2 *Stra.* 1267.

And on the master's death there is no implied assignment or transfer of the apprentice to his executor or administrator, and therefore it seems that he is not bound by his indenture to serve his master's representatives; for on an action of debt by an executrix, on a bond for performance of the covenants in an indenture of apprenticeship, the court of King's Bench held that she could maintain no such action, observing that the binding was to the *master himself*, to learn *his* art and serve *him*, without any mention of executors; and as the words were confined, so was the nature of the contract, which is fiduciary; and an apprentice is bound from a personal knowledge of the integrity and ability of the master; and though the assets of the master are liable on his covenant to maintain the apprentice, that is not material. 2 *Stra.* 1267.

But though an apprentice is not transmissable to the representatives of his master, nor assignable, yet, if he remain in the character of an apprentice with the assignee, or the personal representative of his master with his own consent, and the consent of the other parties, it will be a continuation of the apprenticeship so as to gain a settlement, and enable him to follow the trade. *Cald.* 62. 1 *Doug.* 70.

And it will be the same, though the assignment were only verbal; as where the master of a parish apprentice died intestate, and the widow (without having taken out administration) assigned the apprentice to another master, who, with the consent of the apprentice, transmitted him to a third, it was held that he was well settled at the place where he served the third master; for though the assignment was only a verbal one, it was done with the consent of all the parties concerned, and he lived under the terms of the first indenture of apprenticeship, and as an apprentice, bound according to the statute. *Bur. Set. Ca.* 133.

Attornies, &c.

And by 22 Geo. 2. chap. 46. it is provided, that if the master of any articled clerk of an attorney or solicitor shall die, or discontinue practice, or if the contract

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be cancelled by consent, or the clerk discharged by rule of court, such clerk may be bound to another master for the remainder of the term.

Parish apprentices.

And as to parish apprentices it is enacted by 32 Geo. 3. chap. 57. that in case of the death of the master of any parish apprentice, during the term of his apprenticeship, upon the binding out of whom no more than 5l. was given, the covenant for the maintenance of such apprentice shall not continue in force longer than for the space of 3 months next after the death of such master (*a*), during which 3 months such apprentice shall continue to live with, and to serve as an apprentice, the executors or administrators of such master, or such person as they shall appoint; and the master with whom such apprentice shall be during the said 3 months, and also the apprentice, shall, during that time, be subject to all the laws in force relating to masters and parish apprentices: and that within the said term of 3 months such apprentice on application made to two justices of the place where the master died, by the widow of the deceased master, or the husband of the deceased mistress, or by any son or daughter, brother, or sister, or executor or administrator of such master or mistress, shall be ordered (*b*), if he were living with and made part of the family, or were in the actual employment of such master or mistress at the time of his or her death, to serve any one of the aforesaid persons making such application for the residue of the term of his apprenticeship, provided the person so applying were living with the master or mistress at the time of their death; and such person shall declare his acceptance of the said apprentice by signing the order of the said justices, and after such order the executors and administrators, and the personal effects of the deceased master or mistress shall be discharged from all covenants on the part of the master contained in the original indenture of apprenticeship; and the person taking the said apprentice shall be deemed the master, in like manner as if he had been originally bound to him, and shall, together with his executors and administrators, be bound by the covenants in such indenture, as if he had ex-

(*a*) And a covenant to this purpose is directed to be inserted in the indenture of apprenticeship.

(*b*) By indorsement without stamp, or any instrument in writing, stamped as parish indentures.

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ecuted a counterpart thereof, and be liable to the regulations in force relating to masters and parish apprentices; and the above provisions shall relate to the like event of any subsequent master, their relatives, and representatives, as often as the case shall happen during the term of apprenticeship.

The reason of which provisions, as stated in the preamble of the act is, that the apprentice may make some satisfaction by his labour to the family or representatives of his deceased master, for the advantages he received from his apprenticeship in his childhood, when his services were unequal to the expences of his maintenance.

And if no application for such apprentice shall be made within 3 months, as aforesaid, or in case the said two justices shall be of opinion that the apprenticeship ought not to be continued, then the same shall determine, and the said indenture be at an end.

And it is further provided that in case any master appointed under this act, (or any original master) or if the executors or administrators of such master, having assets, shall, during such 3 months, refuse or neglect to maintain and provide for such parish apprentice, according to covenant, two justices of the county may, on application by the apprentice, or the churchwardens or overseers, order distress and sale of the personal estate of the master, for the maintenance of such apprentice—an appeal being allowed to the quarter sessions, if party is aggrieved.

2. As to the master's becoming a bankrupt.

2. The master's becoming a bankrupt.

The bankruptcy of the master is not of itself a dissolution of the apprenticeship; but the indentures may be delivered up, or the justices at the sessions may discharge the apprentice if applied to for the purpose. 2 *Ld. Raym.* 1352. 1 *Stra.* 582.

But for the more easy discharging of any *parish apprentice*, with whom not more than 5l. was given, from a master becoming a bankrupt, or whose circumstances are become so reduced as to render him unable to employ or maintain such apprentice, it is provided by the aforesaid statute of 32 Geo. 3. chap. 57. that two justices of the place where any such master shall live, on application of the master for the discharge of any such apprentice for the reasons aforesaid, may inquire into the matter of such allegation, and if they find the same to be true, discharge such apprentice accordingly.

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Nothing in the ſaid act ſhall extend to any pariſh apprentice where a larger ſum was given than 5l.

But in caſes not of *pariſh* apprentices, the general practice is, whenever the maſter becomes a bankrupt, for the commiſſioners to recommend it to the creditors to allow the apprentice a groſs ſum out of the eſtate for the purpoſe of binding him out to another maſter, which they uſually do, as it would be hard to make him come in under the commiſſion. This, however, is to be conſidered as an indulgence, and not a right which the apprentice can claim; for all that a court of equity can do is to order him to be admitted a creditor to the amount of the ſum paid with him, after deducting a reaſonable annual ſum for his maintenance during the time he has ſerved. See 1 *Atk.* 149. 261.

CHAP. III.

OF JOURNEYMEN, MANUFACTURERS, AND LABOURERS.

HAVING completed all that we think neceſſary or material in reſpect of *menial ſervants* and *apprentices*, we ſhall now proceed to inquire into the laws relating to the remaining ſpecies of ſervants, (as conſidered by the laws of England) viz. journeymen, manufacturers, and labourers. And theſe we ſhall conſider,

I. In reſpect of their time of ſerving; who compellable to ſerve; and their hours of working.

II. As to their wages, and the means of recovering them.

III. Of diſcharging workmen, and their departure from work.

IV. Of the miſbehaviour of workmen, and the differences which may ariſe between them and their maſters.

V. Of combinations amongſt workmen; and

VI. Of embezzlements and frauds committed by them upon their maſters.

JOURNEYMEN, &c.

1. *The Time for which Perſons ſhall be hired in certain Trades; who compellable to ſerve therein; and their Hours of Labour.*

1. The time of ſerving in certain trades.

1. The time of being hired.

By 5 Eliz. chap. 4. ſec. 31 it is enacted that no perſon ſhall hire, nor ſhall any one be hired to work for a leſs term than one year, in the arts or trades of a clothier, woollen cloth weaver, tucker, fuller, clothworker, ſheerman, dyer, hoſier, taylor, ſhoemaker, tanner, pewterer, baker, brewer, glover, cutler, ſmith, farrier, currier, ſadler, ſpurrier, turner, capper, hatmaker or feltmaker, bowyer, fletcher, arrow-head-maker, butcher, cook, or miller.

2. Who compellable to ſerve.

2. Who compellable to ſerve.

And by ſec. 4. of the ſame ſtatute it is provided, that every perſon not married, and every married perſon under the age of 30, having been brought up in the ſaid arts, or having uſed any of them for the ſpace of 3 years, and not having lands copyhold, freehold, or for life, of the yearly value of 40s. nor being worth the groſs ſum of 10l. (and allowed not to be ſo by two juſtices, or by the mayor or other head officer of the city or town where ſuch perſon dwelt for one year, and alſo two aldermen, or other burgeſſes if there be no aldermen, under their hands and ſeals) nor being retained in huſbandry, nor in any art, nor in houſehold, nor in any office with any nobleman, gentleman, or others, nor having a convenient holding in tillage, whereupon he may employ his labour, ſhall upon requeſt be retained, and ſhall not refuſe to ſerve upon the penalty hereafter mentioned.

Who compellable to ſerve in *Huſbandry*.

It is alſo by the ſaid act further provided, that every perſon between the ages of 12 and 60 years, not retained as an apprentice with any fiſherman, or mariner, nor being in ſervice with any rider or carrier of corn or meal for the city of *London*; nor with any huſbandman, nor in any city or town in any of the arts limited by this ſtatute to take apprentices, nor being retained by the year for digging, ſeeking, finding, getting, melting, fining, working, trying or making, of any ſoder, tin, lead, iron, copper, ſtone, ſea-coal, ſtone-coal, moor-coal, or cheek-coal, nor being occupied in the making of glaſs, nor being a gentleman born, nor being a ſcholar or ſtudent in any of the univerſities, or any ſchool, nor having lands for

life, or in fee, of the yearly value of 40s. or goods of the value of 40l. nor being a neceſſary or convenient officer, or ſervant lawfully retained, nor having a farm or holding whereon to employ his labour, nor being otherwiſe retained, ſhall be compelled to ſerve in huſbandry, by the year, with any perſon that uſeth huſbandry, and requiring any ſuch perſon to ſerve within the county. JOURNEYMEN, &c.

In the time of hay or corn harveſt, the juſtices of the peace, and alſo the conſtable, or other head officer of every townſhip, upon requeſt, and for the avoiding of the loſs of any corn, grain, or hay, may cauſe all ſuch artificers and labourers as are fit for work, to ſerve by the day, for mowing, reaping, ſhearing, and inning of corn, grain, or hay, according to the ſkill or ability of the perſon, and none ſhall refuſe on the penalty of impriſonment in the ſtocks for two days and one night. In harveſt time.

But perſons of ſuch counties where it has been cuſtomary to go into other ſhires for harveſt work, and having at that time no harveſt work ſufficient in the ſame town or county where they dwelt in the winter laſt paſt, and taking with them a teſtimonial under the hand and ſeal of a juſtice, or head officer as aforeſaid, certifying the ſame, may repair in harveſt of corn or hay, to any other county or place, to mow, reap, and get in hay, corn, or grain, and to work at harveſt work, as they might have done before the ſaid act.

And two juſtices, or the mayor, or head officer of a town corporate, and two aldermen, or two burgeſſes, if there be no aldermen, may appoint any *woman* of the age of twelve years and under forty, and unmarried and fit for ſervice, to ſerve by the year, week, or day, for ſuch wages as they ſhall think meet; and if ſhe refuſe to ſerve, ſhe may be committed to priſon until ſhe will ſerve. Women.

It is alſo enacted by the 13th and 14th Car. 2. chap. 12. that a perſon may go abroad to work in harveſt, carrying with him a certificate from the miniſter, and one churchwarden or overſeer, that he hath a dwelling houſe, or place in which he inhabits, and hath left a wife and children, or ſome of them there for other work, as his condition ſhall require.

And perſons carrying with them ſuch certificate ſhall by 17 Geo. 2. chap. 5. ſec. 3. not be liable to be apprehended as vagrants.

3. The hours of working. 3. The hours of working.

All artificers and labourers being hired for wages by

JOURNEYMEN, &c.

the day or week, ſhall, betwixt the *midſt* of *March* and the midſt of *September*, be at their work at *five* in the *morning*, and continue till between ſeven and eight at night, except during the time of breakfaſt, dinner, and drinking, which ſhall not together exceed two hours and a half, that is to ſay, at drinking one half hour, at dinner, one hour, and for their ſleep, (when they are allowed to ſleep, which is from the midſt of May till the midſt of Auguſt), half an hour, and at breakfaſt one half hour; and the ſaid artificers and labourers, between the midſt of September, and the midſt of March, ſhall be at work from the ſpring of day until night except at breakfaſt and dinner time, upon pain of forfeiting one penny for every hour's abſence, which may be deducted out of their wages.

And by 36 Geo. 3. chap. 111. the time of working by journeymen *papermakers*, when employed at the vat upon all fine, wove, and plate-papers, (if the maſters ſhall ſo require) ſhall be half an hour after each poſt, twenty of which poſts ſhall make a days work; and the *dry-worker* upon all ſuch fine papers as aforeſaid (if required) ſhall work 12 hours in each day, allowing an interval of one hour thereout for refreſhment.

Departing without a teſtimonial.

No perſon retained in huſbandry, or in any of the arts aforeſaid, ſhall (by the ſaid ſtat. of 5 Eliz.) depart out of one city, town, or pariſh, to another, nor out of the hundred, diviſion, or county, where he laſt ſerved, to ſerve in any other city, town, diviſion, hundred, or county, unleſs he have a teſtimonial under ſeal of the city, or of the conſtable or other head officer, and two houſeholders of the city, town or pariſh.

And no perſon that ſhall depart out of one ſervice ſhall be retained into any other, without ſhewing, before his retainer, ſuch teſtimonial to the chief officer of the town corporate, and in every other town and place to the conſtable, curate, churchwarden, or other head officer where he ſhall be retained, upon pain that ſuch ſervant ſo departing without ſuch teſtimonial, ſhall be impriſoned till he procure one, which, if he cannot do within twenty one days, he ſhall be whipped, and treated as a vagabond; and every perſon retaining ſuch ſervant without ſuch teſtimonial, ſhall forfeit *five* pounds.

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II. *As to the Wages of Workmen, &c. how they are to be paid, and the Mode of recovering their Wages.*

1. The rating of wages to workmen, &c.

1. By whom to be rated.

To prevent ſervants from demanding exorbitant wages for their labour, it is enacted by 5 Eliz. chap. 4. that the juſtices of the peace of every ſhire, riding, or liberty, and the mayor and other head officer, within any city, or town corporate, ſhall, yearly in Eaſter ſeſſions, aſſemble, and ſhall call unto them ſuch diſcreet perſons as they ſhall think meet, and having reſpect to the plenty or ſcarcity of the time, and other circumſtances, ſhall have authority to limit, rate, and appoint the wages, as well of ſuch the ſaid artificers, handicraftſmen, huſbandmen, or any other labourer, ſervant, or workman, whoſe wages in time paſt have been by any law or ſtatute rated and appointed; as alſo the wages of all other labourers, artificers, workmen, or apprentices of huſbandry, which have not been rated, limited, or appointed, by the year, or by the day, week, month, or otherwiſe, with meat and drink, or without meat and drink, and what wages every workman or labourer ſhall take by the great for mowing, reaping, or threſhing of corn and grain, or for mowing or making of hay, or for ditching, paving, railing, or hedging, by the rod, perch, bigg, yard, pole, rope, or foot, and for any other kind of reaſonable labour or ſervice.

And by 1 Jac. 1. chap. 6. the ſaid act of 5 Eliz. is made to extend to the rating of wages of all labourers, weavers, ſpinſters, and workmen or workwomen whatſoever, either working by the day, week, month or year; or the taking any work by the great or otherwiſe; and when the ſaid rates are ſo ſettled, the ſheriff, or mayor, may cauſe proclamation thereof to be made, where to them ſhall ſeem convenient, and every perſon ſhall be bound to obſerve the ſame.

And if any perſon after ſuch proclamation be publiſhed, ſhall directly or indirectly, retain at, keep or give any ſervant, workman, or labourer any more or greater wages, or other commodity than ſhall be appointed in ſuch proclamation, he ſhall be impriſoned for 10 days, without bail, and forfeit the ſum of 5l.

Penalty for giving more than the rated wages.

And every perſon who ſhall be ſo retained, and take

Or taking thereof,

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wages, contrary to the ſaid act, or to the ſaid proclamation, ſhall be impriſoned for 21 days without bail.

And every retainer, promiſe, gift, or payment of wages, or other thing, contrary to the ſaid act, and every bond or writing made for that purpoſe, ſhall be utterly void.

Penalty for refuſing to pay the rated wages.

Alſo by the ſame ſtatute, if any clothier or other perſon, ſhall refuſe to pay ſo much wages to their weavers, ſpinſters, workmen, or workwomen, as ſhall be ſo ſettled, he ſhall forfeit 10s. to the party aggrieved.

Silk manufacture.

And further by 13 Geo. 3. chap. 68. and 22 Geo. 3. chap. 44. the wages of journeymen weavers, in the ſilk manufacture, or in any of the manufactures of ſilk wrought up with any other materials, within the city of *London*, ſhall be ſettled by the lord mayor, recorder, and aldermen of the ſaid city; and in the county of *Middleſex*, by the juſtices of the ſaid county.

And if any maſter weaver ſhall give more or leſs wages to any journeymen weavers, than ſhall be allowed, he ſhall, on being convicted thereof, before two juſtices, on the oath of one witneſs, forfeit the ſum of 50l. to be levied by diſtreſs and ſale. The ſaid penalty to be paid to the maſter of the company, and diſtributed to diſtreſſed journeymen weavers, or their families.

2. How wages to be paid.

2. How wages to workmen are to be paid.

Clothiers, &c.

By 4 Ed. 4. chap. 1. it is enacted, that every clothmaker ſhall pay to the carders, ſpinſters, and all other labourers, whom he may employ in his trade, their wages agreed upon in *money* only, upon pain of forfeiting to his labourers treble their wages.

And by 1. Ann. ſtat. 2. chap. 18. all payments of wages to workmen employed in the woollen manufactures, ſhall be in money, and not in cloth, victuals, or commodities, upon pain of forfeiting double wages to ſuch workmen.

Woollen manufacturers.

And by 10 Ann. chap. 16. the ſame requiſition is enforced under the penalty of 20s. and by 1 Geo. 1. ſtat. 2. chap. 15. under the penalty of 40s.

Alſo by 12 Geo. 1. chap. 34. and 22 Geo. 2. chap. 27. it is enacted, that every clothier, ſerge-maker, or worſted or woollen ſtuff-maker, or perſons employed in making any woollen cloths, ſerges, or ſtuffs, or concerned in employing woolcombers, combers of Jerſey, frame-work knitters, makers of ſtockings, weavers, dyers, hot-preſſers, and all other perſons employed in making of *felts* or *hats*, or in any of the manufactures of *ſilk*, *mohair*,

fur, hemp, flax, linen, cotton, fuſtian, iron, or leather, or any of the ſaid materials mixed with one another, full wages agreed on in *money*, and ſhall not pay the ſame in goods, or by way of tuck, or in any other manner, or make any deduction, on account of any goods ſold previous to ſuch agreement. JOURNEYMEN, &c.

And by 29 Geo. 2. chap. 33. the ſame mode of payment of wages in reſpect of perſons employed in any of the woollen manufactures, is further enforced under the penalty of 20l. to be recovered by action of debt, by any perſon ſuing for the ſame; or be levied by diſtreſs on a juſtice's warrant—a moiety payable to the poor, and a moiety to the informer. The offence to be proſecuted within three months. Liberty to appeal at the general quarter ſeſſions, if aggrieved.

And by 30 Geo. 2. chap. 12. it is provided that if any clothier, or maker of mixed, medley, or white broadcloth, ſhall neglect to pay to the weavers, employed by him, their wages or price in *money*, within two days next after their work be completed and delivered (provided the ſame be demanded) he ſhall forfeit, for every ſuch offence, the ſum of 40s. to be recovered in like manner as the penalties of 29 Geo. 2. chap. 33.

Alſo by 13 Geo. 2. chap. 8. it is enacted that all payments to workmen, employed in manufacturing leather gloves, breeches, boots, ſhoes, ſlippers, wares, or other goods or materials, uſed in any of thoſe trades, ſhall be in lawful coin only, and not by any victuals or commodities, except by their requeſt. Leathern manufacture.

3. The mode of recovering wages.

Though the juſtices are only authorized by the ſtatute of 5 Eliz. to *rate* the wages, and not to order payment, yet from the indulgence which the law ſhews to remedies for wages, and the common practice of the juſtices, it has been held that they may order payment as well as aſſeſs the rates of wages. 2 *Ld. Raym.* 920. 6 *Mod.* 91. 1 *Stra.* 8. 475. 2 *Ibid.* 1002. 3. Mode of recovering wages.

But the evidence of the ſervant not being admiſſable in caſes of wages, on account of his being an intereſted witneſs, and the ſervant having no other means of enforcing the order of the juſtice than by indictment, 5 *Mod.* 459. to remedy theſe inconveniences it was enacted by 20 Geo. 2. chap. 19. that all complaints and diſputes relating to wages between maſters or miſtreſſes and *ſervants in huſbandry*, hired for one year or longer, or by 31 Geo. 2.

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chap. 11. for a leſs time than a year, or between maſters or miſtreſſes and *artificers*, handicraftſmen, miners, colliers, keelmen, pitmen, glaſsmen, potters, and *other labourers*, employed for any certain time, or in any other manner, ſhall be heard and determined by one juſtice, although no rate of wages had been made in that year, which juſtice may examine any ſervant or other witneſs upon oath, and make ſuch order for payment of ſo much wages as he may think juſt, provided the ſum in diſpute do not exceed 10l. in regard to any ſervant in huſbandry, nor 5l. with regard to any artificer, handicraftſman, or other perſon aforeſaid; and in caſe of refuſal or non-payment for the ſpace of 21 days after ſuch determination, the ſum ſo adjudged to the ſervant may be levied on the maſter and miſtreſs by diſtreſs and ſale. Perſons aggrieved may appeal to the ſeſſions, which ſhall be final.

Conſtruction of the above ſtatutes.

But in the conſtruction of the ſtatute of Eliz. it hath been determined that juſtices of the peace have no juriſdiction to order payment of wages except in the caſe of huſbandmen and ſuch ſervants whom they may compel to ſerve according to the ſtatute. 6 *Mod.* 91. *Carthew.* 156.

Therefore, where juſtices of the peace made an order for the payment of ſo much money by a maſter to his coachman, and it was moved againſt the order that the ſtatute 5 Eliz. chap. 4, extends not to coachmen, or other ſervants than in huſbandry; the court were of that opinion, and quaſhed the order. 2 *Jones* 47.

And on the authority of this caſe it hath been held, that the juſtices cannot make order for the payment of footmen, bricklayers, carpenters, or the like ſervants wages, becauſe their juriſdiction is confined as has been before obſerved, to the wages of ſuch ſervants whom they may compel to ſerve according to the ſtatute. 6 *Mod.* 204, 205.

Alſo, if a perſon retains a ſervant, and agrees to pay him ſo much by the day, month, or year, he may have an *action* againſt the maſter on the contract, or againſt his executors; and every ſuch retainer will be preſumed to be in conſideration of wages, unleſs the contrary appears. 9 *Co.* 88. 2 *Roll. Rep.* 269.

III. *Of diſcharging of Workmen, and their Departure from Service.*

Diſcharging ſervants.

It is provided by the ſaid ſtat. 5 Eliz. chap. 1. that if any maſter ſhall put away his ſervant before the end of his term, unleſs for cauſe to be allowed by a juſtice, without a quarter's warning, ſuch maſter, unleſs he prove by two witneſſes ſuch cauſe or warning before juſtices of *oyer and terminer*, or of aſſize, or quarter ſeſſions, or before the mayor, or other head officer, and two aldermen, or two burgeſſes if no aldermen, ſhall forfeit 40s.

Servants departing or not doing their duty.

And if any ſervant retained according to the above ſtatute ſhall depart before the end of his term, unleſs for ſome reaſonable cauſe allowed as aforeſaid, or at the end of his term, without a quarter's warning, or if any perſon bound to ſerve in huſbandry, or other arts abovementioned, by the year or otherwiſe, refuſe to ſerve for the wages to be limited by this ſtatute, or promiſe to ſerve, and do not ſerve, ſuch ſervant upon complaint to two juſtices, or the mayor, or head officer, and two burgeſſes where no aldermen, ſhall be committed by them to ward until he be bound to the party to ſerve and continue for the wages that ſhall be there limited, and to be diſcharged upon his delivery, without fee to the gaoler.

And by 6 Geo. 3. chap. 25. if any artificer, callico-printer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, labourer, or other perſon, ſhall contract with any perſon whomſoever, for any time whatſoever, and ſhall abſent himſelf from ſervice before the term ſhall be completed, any juſtice where ſuch artificer, or perſon aforeſaid, ſhall be found, upon complaint thereof made upon oath by the perſon with whom he ſhall have ſo contracted, or by his ſteward or agent, may examine into the complaint, and if it ſhall appear to ſuch juſtice that he ſhall not have fulfilled ſuch contract, ſuch juſtice may commit him to the houſe of correction for a term not exceeding three months, nor leſs than one month.

Nothing in the above act ſhall extend to the ſtannaries in Devonſhire and Cornwall.

Or leaving work unfiniſhed.

And every artificer and labourer retained in building or repairing any church, houſe, ſhip, mill, or other work

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in great, ſhall not depart unleſs it be on account of the nonpayment of his wages, or be taken to ſerve the king, or for other lawful cauſe, or unleſs he have leave of the owner, before finiſhing his work, upon pain of impriſonment for one month, and 5l. to the party aggrieved beſides coſts; nor ſhall any artificer or labourer retained to work for the king, or any other depart till the work be finiſhed, if the perſon retaining him will ſo long keep him and pay him his wages, on penalty of one month's impriſonment.

And damages may be recovered by the maſter of each workman, againſt any one who may *entice* him to leave his work unfiniſhed, or *employ* him after notice of his being employed by another, for per *Kenyon*, he that contracts with another to do certain work for him, is the ſervant of that other till the work is finiſhed, and no other perſon can employ ſuch ſervant to the prejudice of the firſt maſter; the very act of giving him employment is affording him means of keeping him out of his former ſervice. 6 *Term Rep.* 221.

Workmen going into other counties.

And if any ſervant or apprentice of huſbandry, or of any art, ſcience, or occupation aforeſaid, unlawfully flee into any other ſhire, they may be impriſoned till they find ſurety well and honeſtly to ſerve their maſters.

IV. *As to Miſbehaviour of Workmen, and Differences between them and their Maſters.*

Servants aſſaulting their maſters.

By 5 Eliz. chap. 4. it is enacted, that if any ſervant, workman, or labourer, ſhall wilfully or maliciouſly make an aſſault, or affray upon his maſter or miſtreſs, or upon any other having charge or overſight over ſuch ſervant, or labourer, or over the work wherein he is hired to work, and ſhall thereof be convicted before two juſtices, or mayor, or other head officer, by confeſſion, or the oath of two witneſſes, he ſhall be impriſoned for a year, or leſs, at the diſcretion of two juſtices, out of a town corporate; and in a town corporate, of the mayor or other head officer, with two others of the diſcreeteſt perſons of the ſame corporations; and if the offence require a further puniſhment, then to receive ſuch other open puniſhment (ſo as it extend not to life or limb), as the juſtices in ſeſſions, or the mayor, or other head officer, and ſix, or four at leaſt, of the diſcreeteſt perſons of the corporation ſhall think convenient, for the quality of the offence.

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By 20 Geo. 2. chap. 19. it ſhall be lawful for one juſtice, upon complaint made upon oath by any maſter or miſtreſs, or employer, againſt any ſervant in huſbandry, artificer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, or labourer, concerning any miſdemeanor, miſcarriage, or ill behaviour, in ſuch ſervice, to hear and determine the ſame, and to puniſh the offender by commitment to the houſe of correction, there to be corrected and held to hard labour for a reaſonable time, not exceeding one calendar month; or by abating ſome part of his wages, or by diſcharging him from his ſervice.

Complaint of maſters againſt their ſervants.

And in like manner it ſhall be lawful for ſuch juſtice, upon any complaint made upon oath by any ſuch ſervant, artificer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, or other labourer, againſt ſuch maſter, miſtreſs, or employer, concerning any miſ-uſage, refuſal of neceſſary proviſion, cruelty, or ill treatment, to ſummon ſuch maſter, miſtreſs, or employer, to appear before him at a reaſonable time to be prefixed in ſuch ſummons, and he ſhall examine into the matter of ſuch complaint, whether ſuch maſter, miſtreſs, or employer, ſhall appear or not (proof being made upon oath of their being ſummoned) and upon the proof of the complaint upon oath, he may diſcharge ſuch ſervant, or other perſon aforeſaid, from his ſervice and employment, which diſcharge ſhall be given under the hand and ſeal of ſuch juſtice gratis.

Complaints of ſervants againſt their maſters.

Alſo by 6 Geo. 3. chap. 25. if any artificer, calico printer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, labourer, or other perſon, ſhall be guilty of any miſdemeanor, any juſtice where ſuch artificer, or perſon aforeſaid, ſhall be found, upon complaint thereof made upon oath by the perſon with whom he ſhall have ſo miſbehaved, or by his ſteward or agent, may examine into the complaint, and if it ſhall appear to ſuch juſtice that he hath been guilty of any midemeanor, ſuch juſtice may commit him to the houſe of correction for a term not exceeding three months, nor leſs than one month.

Nothing in the above act ſhall extend to the ſtannaries in Devonſhire and Cornwall.

V. *Of Combinations amongſt Workmen.*

1. Combinations *in general.*

1. Of combinations amongſt workmen in general.

By the ſtatute 2 and 3 Edw. 6. chap. 15. it is enacted that if any artificers, workmen, or labourers do conſpire, covenant, or promiſe together, or make any oaths, that they will not make or do their work but at a certain price, or rate, or ſhall not enterprize or take upon them to finiſh what another hath begun, or ſhall do but a certain work in a day, or ſhall not work but at certain hours and times, ſuch perſons being convicted at the aſſizes, ſeſſions, or court leet, ſhall forfeit for the firſt offence, 10l. to the king; and if he pay not the ſame within ſix days, ſhall ſuffer twenty days impriſonment, and ſhall have only bread and water for his ſubſiſtence; for the ſecond offence, 20l. or, if not paid within 6 days, pillory; and for the third offence, 40l. loſs of one ear, and to be deemed infamous.

Confederacies amongſt workmen are alſo deemed highly criminal by the common law, and therefore journeymen confederating and refuſing to work, unleſs for certain wages agreed upon amongſt themſelves, may be indicted and puniſhed for a conſpiracy, although the ſtatutes regulating their work and wages do not direct ſuch a mode of proſecution; for it is the conſpiring, and not the refuſal to work, which conſtitutes the offence. 8 *Mod.* 10.

And conſpiracies of every kind are illegal, even though the things to be done may be lawful for the parties to do if they had not *conſpired* to do them. *Ibid.*

And as a conſpiracy is a *treſpaſs*, it is inquirable into, and puniſhable by juſtices of the peace at their ſeſſions. 3 *Bur.* 1321.

2. Combinations in *particular trades.*

2. Of combinations amongſt artificers of particular trades.

By 12 Geo. 1. chap. 34. it is enacted, that all contracts, agreements, by-laws, orders, &c. made or entered into, in clubs, or ſocieties, by perſons exerciſing the art of a *woolcomber*, or *weaver*, or by journeymen in thoſe trades, or (by 22 Geo. 2. chap. 27.) by any journeymen dyers or hotpreſſers, or other perſons employed in any of the woollen manufactures; or by any perſons, journeymen, or otherwiſe, employed in the making of *felts* or *hats*, or in any of the manufactures of *ſilk*, *mohair*, *fur*, *hemp*, *flax*, *linen*, *cotton*, *fuſtian*, *iron*, or *leather*, or of any

of the ſaid materials, mixed with any other of them, in order or under pretence of regulating the ſaid arts or trades, or for fixing the prices of goods therein, or for ſhortening their accuſtomed hours of work, ſhall, and are thereby declared to be illegal, and null and void; and further, that if any ſuch perſon ſhall keep up, ſign, or knowingly be concerned in any contract, agreement, bye-law, or order, of any club, or combination, by the ſaid act declared to be illegal, or ſhall attempt to put any ſuch illegal act into execution, the offender ſhall, on conviction, (within three months after the offence) by the oath of one witneſs, before two juſtices of the peace, be committed either to the houſe of correction, and there kept to hard labour for a time not exceeding 3 months, or to the common county goal for a like period—with liberty of appeal to the quarter ſeſſions. JOURNEYMEN, &c.

And by 36 Geo. 3. chap. 111. all contracts, covenants, and agreements whatſoever, whether in writing or not, made before the paſſing that act, between any journeymen paper-makers, for obtaining an advance of wages, or for leſſening their uſual hours or quantity of work, or for preventing any perſon from employing whomſoever they ſhall think proper in the buſineſs of paper-making, or in any way affecting any perſon in the carrying on of the ſaid trade, is declared to be illegal and void. Paper-makers.

And if any journeyman paper-maker, or other perſon, ſhall at any time enter into or be concerned in the making of any agreement in writing, or not in writing, in ſupport of or relative to ſuch combination, every ſuch offender being convicted on the oath of *one* witneſs, before *one* juſtice of the peace, upon information to be exhibited before him in writing within one *(lunar)* month after the offence committed, ſhall be ſent to the houſe of correction, and kept to hard labour for a time not exceeding two calendar months.

And every journeyman paper-maker, who ſhall enter into any combination to raiſe ſuch wages, or to alter the hours or duration of work, or for any other purpoſe contrary to the ſaid act, or who ſhall, by giving money, or by any other means, directly or indirectly, ſolicit, intimidate, or endeavour to prevent any unhired journeyman, or other perſon, from hiring himſelf to any paper-manufacturer, or by any means attempt to prevail on any journeymen employed in ſuch manufacture, to quit the ſervice of ſuch maſter, or attempt to prevent any

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master from employing whomsoever he shall think proper, or, if being employed, he shall refuse to work with any other whom such master shall chuse to employ, such offender on conviction, in manner aforesaid, shall be sent to the house of correction for a term not exceeding two calendar months.

And it is further enacted by the said acts of 17 Geo. 3. and 36 Geo. 3. that if *any person whomsoever*, (whether employed in the said trades or not) shall attend any meeting, club, or combination by the said act declared to be illegal as aforesaid, or shall summon or require any journeyman, or other person employed in any branch of the said trades to attend such meeting, or to pay any money as a fine, contribution, or subscription for the purposes of such club, or meeting; or any person collecting or receiving such money, or who shall persuade or endeavour to persuade, entice, inveigle, or intimidate, any person employed in the said trades to be a member of, or concerned in, any such club, &c. or unduly to quit the service of his master—Also the person paying any money, or subscription, towards the support or encouragement of any such club, or meeting; such person or persons so offending as aforesaid, shall, on conviction of such offence, before *two* justices of the peace (*a*) (if the offence be in the *hat* manufactory, and *one* justice, if in the *paper* manufactory) on the oath of one witness, be committed to the house of correction, or common county goal, without bail, for any time not longer than 3 months, if offending against the *hat* manfactory, and 2 months if against the *paper* manufactory.

Assaulting or threatening masters not complying with the demands of workmen.

And by the said act of 12 Geo. 1. as extended by 22 Geo. 2. chap. 27. it is enacted that if any person (whether employed in the aforesaid trades or not) shall assault any master woolcomber, or master weaver, or other person concerned in any of the woollen manufactures, or in the trades or arts of dyeing, hotpressing, making of hats or felts, or in any of the manufactures of silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron, or leather, or in any manufacture wherein any of the said articles are mixed with the other of them, whereby such master shall re-

(*a*) But by the same act it is very properly observed, that no master hatmaker shall be one of the justices in cases relative to this or the former act.

ceive any bodily hurt, for refuſing to comply with the bye-laws, orders, contracts, demands, &c. declared to be illegal as aforeſaid; or if any perſon ſhall write, or ſend a meſſage, threatening to hurt any ſuch maſter, or other perſon aforeſaid, or to burn or deſtroy their houſes, cut down their trees, or maim their cattle, every ſuch perſon ſo offending ſhall be guilty of felony, and be tranſported for the term of 7 years. The indictment on this ſtatute muſt be found within 12 calendar months after the commiſſion of the offence. JOURNEYMEN, &c.

VI. *Concerning Embezzlements, and Frauds committed by Workmen on their Maſters.*

1. Relative to the woollen manufactures.

By 7 Jac. 1. chap. 7. it is enacted, that if any ſorter, carder, kember, ſpinſter, weaver, or other perſon in the woollen manufacture, ſhall unjuſtly and deceitfully embezzle, ſell, or detain any wool, or yarn, delivered to him or her, by any perſon making cloths or ſtuffs, ſuch perſon ſo offending, as alſo the buyer and receiver thereof, (knowing the ſame) being thereof convicted by confeſſion, or the oath of one witneſs, before two juſtices of the peace, or if within a town corporate, before the mayor, or other chief officer, and one of the aldermen, or moſt ſubſtantial perſon in ſuch place, ſhall make the party aggrieved ſuch ſatisfaction as the ſaid juſtices or other chief officer ſhall order; and if the perſon ſo offending be unable or refuſe to make ſatisfaction, he ſhall, for the firſt offence be whipped, and ſet in the ſtocks, and for a ſecond offence incur a further puniſhment by whipping and ſtocks, at the diſcretion of the ſaid juſtices, or chief officers. 1. Embezzlements, &c. in the *woollen manufacture*.

And by ſec. 4. of the above act it is provided, that if any *ſpinner* in *Eſſex*, ſhall receive wool to be ſpun into yarn, for any clothier or manufacturer of baize, ſays, or other ſtuffs, dwelling in *Cogſhall*, *Bocking*, *Braintree*, *Halſtead*, *Witham*, or *Colcheſter*, and ſhall deliver back ſuch yarn by any ſhorter reel than is there uſed, (which is two yards round about) he ſhall be ſubject to a like penalty or puniſhment. Spinners in Eſſex.

And by 14 Geo. 3. chap. 25. if any picker, ſcribbler, ſpinner, weaver, or other perſon employed in manufacturing of woollen cloth, or in preparing materials for that purpoſe, ſhall not return all working tools, wool, yarn, chain wool, or abb, delivered to them to be Embezzlement of tools or materials.

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manufactured, and alſo all materials with which he or ſhe ſhall be entruſted, or otherwiſe give a ſatisfactory account of the ſame, or if he ſhall fraudulently ſteam, damp, or water, the wool or yarn ſo delivered to him to be worked, or if any perſon ſhall take off, cut, or pick out, the liſt, ſorrel, or other mark of any piece of cloth, and ſhall of the ſaid offence be convicted, by confeſſion or the oath of one witneſs before a juſtice of the peace, he ſhall be committed to the houſe of correction for the ſpace of one month.

And where any perſon ſo employed, who ſhall have been entruſted with any tools, wool, or other materials, and not have delivered or accounted for the ſame, ſhall abſcond, or ſhall ſell, or diſpoſe thereof; or where any perſon ſhall fraudulently buy, or receive ſuch tools, or materials, or where any perſon ſhall be charged on ſuſpicion with having embezzled and kept back by damping, ſteaming or watering the wool or yarn delivered to them, or with having ſold, bought, or received the ſame, and upon ſearch any of the ſaid working tools, wool, yarn, chain woof, or abb, or any cloth with the liſt, ſorrel, or other marks taken off, cut, or picked out, ſhall be found, the perſon on whom the ſame ſhall be ſo found, unleſs he can give a good account how he came thereby, to the ſatisfaction of a juſtice, ſhall, on conviction, ſuffer ſuch puniſhment as is before directed to be inflicted on perſons not returning tools or materials as aforeſaid (*a*).

Concealing ends of yarn, &c.

And if any ends of yarn, wefts, thrums, ſhort yarn, or other refuſe of cloſe drugget, or of other woollen goods, or of goods mixed with wool (flocks and pinions excepted) above the weight of 3 pounds, be found on any perſon who ſhall not exculpate himſelf to the ſatisfaction of a juſtice, he ſhall thereupon ſuffer the ſame puniſhment as perſons not returning tools or materials.

Second offence.

Further if any perſon offending againſt this act ſhall be charged upon oath, of having been before convicted there-

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(*a*) But by the ſame act, the perſon accuſed may appoint a reaſonable time to produce thoſe from whom he received the goods, or a witneſs to prove the ſale or delivery, on entering into a recognizance, with two ſureties, for that purpoſe; and if at ſuch time appointed, ſuch perſon ſhall be convicted of either of the offences aforeſaid, he ſhall ſuffer the puniſhment before directed.

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upon, the juſtice of the peace before whom he ſhall be ſo charged, ſhall commit him to the houſe of correction until the next general quarter ſeſſions, (unleſs ſuch perſon enter into recognizance with ſureties, to appear and ſtand his trial at ſuch ſeſſions) when the matter ſhall be inquired of and determined in a ſummary way, and if the ſaid offender ſhall be convicted of the ſaid offence, he ſhall be committed to the houſe of correction for any term not exceeding 3 months; and if it ſhall appear to the juſtices that he hath been before convicted at a ſeſſions of any offence againſt the ſaid act, he ſhall be committed to the houſe of correction for a term not exceeding 6 calendar months, and be alſo once publicly whipped (*a*).

Reeling falſe or ſhort yarn.

By 14 Geo. 3. chap. 44. it is enacted that if any perſon ſhall reel falſe or ſhort yarn, and ſhall be convicted thereof by the oath or affirmation of the owner or any other credible witneſs, or by his own confeſſion, before a juſtice, he ſhall, for the firſt offence, forfeit a ſum not exceeding 20s. nor leſs than 5s.; for the ſecond offence, a ſum not exceeding 5l. nor leſs than 40s. and for every after offence he ſhall be committed to the houſe of correction to be kept to hard labour for the ſpace of one month, and be once publicly whipped at the neareſt market town to the place where the offence was committed: (the whole of ſuch pecuniary penalties to go to the party aggrieved;) and by 25 Geo. 3. chap. 14. the ſame may be levied by diſtreſs and ſale: and if the offender have not goods ſufficient to anſwer the ſaid penalty, he ſhall be committed to the common county goal for the ſpace of one calendar month—with liberty in all the above caſes to appeal to the general quarter ſeſſions.

2. Embezzlements and frauds in the *woollen*, *linen*, *fuſtian*, *cotton*, and *iron* manufactures.

2. Relative to the woollen manufacture together with *other* manufactures mentioned in the margin.

It is enacted by 1 Ann. ſtat. 2. chap. 18. That if any perſon employed in the working up the *woollen*, *linen*, *fuſtian*, *cotton*, or *iron* manufactures within the kingdom, ſhall embezzle, or purloin any wefts, thrums, cotton, or iron, or (by 17 Geo. 3. chap. 56) tools or implements which he ſhall have been entruſted with to work, or

(*a*) Offences againſt the ſaid act muſt be proſecuted within three months after the offence; and no order ſhall be quaſhed for want of form, or be removed into any of the courts at Weſtminſter. ſec. 10.

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drugs or ingredients for dyeing the ſaid materials, or ſhall reel falſe or ſhort yarn, he ſhall, on conviction, by confeſſion, or the oath of one witneſs before a juſtice of the peace, forfeit double the value of the damages done; or if he be unable to make ſufficient ſatisfaction, he ſhall be publicly whipped, and kept to hard labour in the houſe of correction for a time not longer than 14 days. And ſee 14 Geo. 3. chap. 44. ante p. 57.

Alſo, by 13 Geo. 2. chap. 28. (and by 22 Geo. 2. chap. 27, and 17 Geo. 3. chap. 56. extending and rendering more effectual the ſaid act of 13 Geo. 2) it is enacted, that if any perſon employed in the above manufactures or in the making any felt or hat, or in working up or preparing any woollen, linen, fuſtian, iron, fur, hemp, flax, mohair, or ſilk, or any of thoſe materials, mixed with others of them, ſhall put in, embezzle, ſecrete, ſell, pawn, or exchange, or otherwiſe unlawfully diſpoſe of, any of ſuch materials, whether they be firſt wrought, or worked up or not, he ſhall, on conviction before *two* juſtices of the peace, by oath of the owner, or other witneſs, or by confeſſion, be for the firſt offence committed to the houſe of correction, or public priſon, there to be kept to hard labour, for not leſs than 14 days, nor more than 3 months; and alſo, if the juſtice deem it proper, be once publicly whipped.

Second offence.

And for a ſecond, or oftener offence, in any of the matters aforeſaid, he ſhall be committed to priſon, or to the houſe of correction, for a term not exceeding ſix months, nor leſs than three; and alſo publicly whipped or not, at the diſcretion of the juſtice.

Neglect in returning materials not uſed.

And if any perſon entruſted with any of the aforeſaid materials, for the purpoſe of preparing or working them up, as before mentioned, ſhall neglect, for the ſpace of eight days after ſuch materials have been prepared or worked up, to return, at the requeſt of the owner, ſo much of the ſame materials as ſhall not have been uſed or worked up, ſuch neglect ſhall be conſidered as an embezzlement of the ſame, and the offender ſhall be liable to like penalties, as in ſuch caſe is provided.

Not working up materials, or taking in work from ſeveral maſters.

And further by the ſaid act of 17 Geo. 3. chap. 56. if any perſon employed to prepare or work up any of the materials before enumerated, ſhall refuſe or wilfully neglect, for the ſpace of eight days, to prepare or work up the ſame; or having taken in any ſuch materials for the purpoſe of manufacturing the ſame, from one maſter,

(or two or more being partners) ſhall afterwards, within eight days before the completion of the materials ſo taken in, take in, or employ himſelf in manufacturing, any other materials for the like purpoſe, from any other maſter, ſuch perſon, being thereof convicted, by the oath of one witneſs, before two juſtices, ſhall be committed to the houſe of correction, and there kept to hard labour, for a term not leſs than one month, nor more than three months. JOURNEYMEN, &c.

And further, if any perſon ſhall take in any of the materials aforeſaid, under promiſe, or apparently in order to manufacture them himſelf, and ſhall afterwards, without the conſent of the owner, put out the ſame, or any part thereof, to be manufactured by any other perſon; or if any other perſon, ordered to deliver ſuch materials to one perſon, to be manufactured, ſhall deliver the ſame to any other perſon; every ſuch offender ſhall be liable to the ſame penalties as is directed to be inflicted by the laſt ſection on perſons neglecting the performance of their work (*a*). And by 12 Geo. 1. chap. 34. and 22 Geo. 2. chap. 27. if any perſon, retained in any of the aforeſaid arts, ſhall depart from his employment, before the time agreed upon, or if he ſhall quit or return his work before it is finiſhed, according to agreement, (unleſs for cauſe to be allowed of by two juſtices) he ſhall, on conviction before two juſtices of the peace, be committed to the houſe of correction, to hard labour, for a term not exceeding three months. Tranſferring work to others, &c.

Or if any perſon ſo employed, ſhall wilfully deſtroy or damage any materials or work entruſted to his care, he ſhall, on conviction as aforeſaid, forfeit double the value to the owner, to be levied by diſtreſs and ſale; and in failure of diſtreſs, be in like manner committed for a term not exceeding three months. Damaging materials.

(*a*) And the owners of ſuch materials, are, by this act, empowered to enter, at all ſeaſonable times in the day time, into the ſhops or outhouſes of any perſon by them employed to manufacture the ſame; and if any workman refuſe to admit the owner of ſuch materials, he ſhall forfeit a ſum not exceeding 40s. nor leſs than 10s. at the diſcretion of a juſtice, ſec. 15.

JOURNEYMEN, &c.

Dyeing materials.

And by 17 Geo. 3. chap. 16. it is enacted, that any journeymen dyer or apprentice, who ſhall be employed in dying of any felt or hat, or of any woollen, linen, fuſtian, cotton, leather, fur, flax, mohair, or ſilk materials, without the conſent of his maſter, or ſhall, without ſuch conſent, take in any ſuch materials, for the purpoſe of dyeing the ſame, he ſhall, on conviction, for the firſt offence, forfeit the ſum of 10s. and for the ſecond offence 20s. and for every ſubſequent offence, the ſum of 40s. (*a*); the ſaid penalties to be paid to the informer; and in default of payment, the offender to be committed to the common goal, or houſe of correction, for a time not exceeding one month.

In all the aforeſaid caſes, the party, if aggrieved, may appeal to the next general quarter ſeſſions.

Local ſtatutes.

Note. Beſides the above *general* ſtatutes, which are applicable to manufacturers in all parts of the kingdom, there have been ſome *particular* acts paſſed for the regulation of manufacturers employed in the wool-combing and worſted trades, which are confined in their operation to particular counties and places; but to give a ſeparate abſtract of each of theſe, would be ſwelling our treatiſe to an inconvenient length, and be uſeful only to the inhabitants of thoſe particular diſtricts; we ſhall, therefore, barely enumerate them, for the purpoſe of enabling thoſe whom they may concern, more readily to refer to them;—they are principally theſe;

17 Geo. 3. chap. 11. relating to the counties of *York*, *Lancaſter*, and *Cheſter*.

24 Geo. 3. chap. 3. applying to the county of *Suffolk*, only.

25 Geo. 3 chap. 40. extending to the counties of *Bedford*, *Huntingdon*, *Northampton*, *Leiceſter*, *Rutland*, and *Lincoln*, and to the *Iſle of Ely*—and

31 Geo. 3. chap. 56. referring to the county of *Norfolk*, and city of *Norwich*.

(*a*) Penalties are alſo recoverable of thoſe who employ journeymen, &c. to dye materials, without the maſter's knowledge, viz. for the firſt offence 5s, for the ſecond 20s. and for every ſubſequent offence 4l.

JOURNEYMEN, &c.

3. We ſhall now proceed, thirdly, to embezzlements and frauds in the leathern manufactures.

3. Embezzlements, &c. in the *leathern* manufactures.

By 13 Geo. 2. chap. 8. it is enacted, that if any perſon, who is employed in the manufacture of gloves, breeches, boots, ſhoes, ſlippers, leather wares, or other goods or materials uſed in ſuch manufactures, ſhall fraudulently embezzle, ſecrete, ſell, pawn, or exchange, any of the materials with which he ſhall be entruſted to work, or any goods or wares when made, or ſhall in any way wilfully injure or damage the ſame materials or wares, he ſhall, on conviction before a juſtice of the peace, by the oath of his maſter, or the owner, or any other credible witneſs, or by confeſſion, be made to give ſatisfaction for the goods or materials ſo embezzled or damaged, not exceeding double the value of the ſame, together with the charge of conviction; one half of the penalties to go to the party aggrieved, and the other to the poor of the pariſh: and if the ſaid penalties be not immediately paid, ſuch offenders ſhall be committed to the houſe of correction, or county gaol, and there kept to hard labour, for 14 days; and alſo whipped, if the juſtice ſo order.

Second offence.

And in caſe of a ſecond or other like offence, ſuch offender ſhall, on conviction, in manner aforeſaid, forfeit for each offence four times the value of the goods embezzled or damaged, with the coſts of conviction; and in caſe of non-payment, ſhall be committed to the houſe of correction or public priſon, and kept to hard labour, for a term not exceeding three months, nor leſs than one; and alſo once or oftener be publicly whipped.

Working for other maſters.

And further, if any perſon employed in making any gloves, or other the wares or goods aforeſaid, for one maſter, and ſhall neglect to complete the ſame, by hireing himſelf to another maſter, he ſhall be ſent to the houſe of correction, and kept to hard labour, for a time not exceeding one month. Liberty of appeal, if aggrieved, to the general quarter ſeſſions.

Bills of mortality.

And in reſpect to the *bills of mortality* in particular, it is enacted by 9 Geo. 1. chap. 27. that if any journeyman ſhoemaker, within the bills of mortality, ſhall fraudulently purloin, ſell, pawn, or exchange, any boots, ſhoes, ſlippers, cut leather, lace, laſts, or other materials of his employer, he ſhall, on conviction, by the oath of one witneſs, or confeſſion, before a juſtice, be ordered to make ſatisfaction for the ſame; and if he refuſe or neglect ſo

JOURNEYMEN, &c.

to do, he ſhall be whipped in the pariſh where the offence was committed.

Second offence.

And for every other, after a firſt offence, he ſhall be committed to the houſe of correction, and there confined to hard labour, for a time not exceeding one month, nor leſs than 14 days.

4. Embezzlements, &c. in the *ſilk* manufactory.

4. Relative to the ſilk manufacture.

By 13 and 14 Car. 2. chap. 15. it is enacted, that if any ſilk winder or doubler ſhall embezzle, pawn, ſell, or detain, any ſilk delivered him to wind or double, he ſhall, on conviction, by confeſſion, or by the oath of one witneſs, before a juſtice of the peace, or mayor or other head officer of a city or town corporate, give ſuch ſatisfaction for damages ſuſtained, and charges on conviction, as the juſtice or head officer aforeſaid ſhall direct, ſo that the ſame do not exceed the damage ſuſtained; and in default of ſatisfaction, made within 14 days after conviction, he ſhall, for the firſt offence, be whipped or ſet in the ſtocks; and for any ſubſequent offence, be puniſhed in ſuch manner, by whipping or being placed in the ſtocks, as the ſaid juſtice or officer ſhall order.

5. Embezzlements, &c. in *clock* and *watch* manufactures.

5. Relative to clock and watch manufactures.

By 27 Geo. 2. chap. 7. it is enacted, that any perſon, who ſhall be employed by perſons exerciſing the trade or art of clock or watch-making, or any branch of ſuch trade, to make, finiſh, alter, repair, or clean, any clock or watch, or any part thereof, or who ſhall be entruſted by his employer with any gold, ſilver, or other metal or mineral, that ſhall, in whole or in part, be wrought for any part of a clock or watch, or with any precious ſtone, ſet, or to be ſet, in or about any clock or watch, and ſhall purloin, embezzle, ſecrete, ſell, pawn, exchange, or otherwiſe unlawfully diſpoſe thereof, ſuch offender, being convicted before a juſtice, by the oath of one witneſs, or by confeſſion, ſhall, for the firſt offence, forfeit the ſum of 20l.; and if the ſum be not forthwith paid, he ſhall be committed to the houſe of correction, or other public priſon, and there kept to hard labour for 14 days, unleſs the ſaid forfeiture be ſooner paid; and if the ſame be not paid within two days before the expiration of ſuch 14 days, he may be publicly whipped, at the diſcretion of the juſtice.

Second offence.

And for every ſubſequent offence, the ſaid offender ſhall forfeit the ſum of 40l. which, if not forthwith paid,

he ſhall be committed to the houſe of correction, or public priſon, and there kept to hard labour, for a time not exceeding three months, nor leſs than one; and if the ſame be not paid within ſeven days before the expiration of the time for which ſuch offender ſhall have been committed, the juſtice may order him to be publicly whipped twice or oftener, at his diſcretion. JOURNEYMEN, &c.

APPENDIX

OF

PRECEDENTS.

I. *An Indenture of Apprenticeſhip, in which the Apprentice binds himſelf to a Surveyor and Builder; with many ſpecial Proviſions.*

THIS indenture made the firſt day of May in the thirty-ſecond year of the reign of our Sovereign Lord *George* the Third, by the Grace of God of *Great-Britain*, *France*, and *Ireland*, King, Defender of the Faith, &c. and in the year of our Lord one thouſand ſeven hundred and ninety-two, between *William Lyons*, of *London-ſtreet*, *Tottenham-court-road*, in the county of *Middleſex*, Gentleman, of the one part; and *Thomas Nagger*, of *High-ſtreet*, in the pariſh of St. *Mary-le-bone*, in the ſaid county of *Middleſex*, Architect, of the other part, witneſſeth, that the ſaid *William Lyons* of his own free will and accord, teſtified by his ſealing and delivering theſe preſents, hath put and bound himſelf apprentice to the ſaid *Thomas Nagger*, to be taught and inſtructed in the ſeveral trades, buſineſſes, or employments of an architect and a ſurveyor, from the day of the date of theſe preſents, unto the full end and term of four years from thence next enſuing. And that the ſaid *Thomas Nagger*, in conſideration of the ſum of one hundred pounds, of good and lawful money of *Great-Britain*, to him in hand well and truly paid, by the ſaid *William Lyons*, at or before the ſealing and delivering of theſe preſents, the receipt whereof the ſaid *Thomas Nagger* doth hereby acknowledge, and of and from the ſame, and every part thereof, doth acquit and diſcharge the ſaid *William Lyons*, his executors, adminiſtrators, and aſſigns, by theſe preſents, hath (teſtified by his ſealing and delivery hereof) agreed to

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take and accept of the ſaid *William Lyons* as his apprentice, during the ſaid term. And the ſaid *William Lyons* doth hereby covenant, promiſe, and agree to and with the ſaid *Thomas Nagger*, his executors and adminiſtrators, that he, the ſaid *William Lyons*, ſhall and will, during all the ſaid term of four years, well and truly ſerve the ſaid *Thomas Nagger*, as an apprentice in the ſaid trades or buſineſſes of an architect and a ſurveyor, diligently attending to the buſineſs and concerns of his ſaid maſter, from the hour of nine o'clock in the morning, until the hour of ſeven o'clock in the evening, ſave and except an interval of two hours, which is to be allowed the ſaid *William Lyons* to dine; doing no damage or injury to his ſaid maſter, nor knowingly ſuffering the ſame to be done without acquainting his ſaid maſter therewith; but ſhall and will in all reſpects acquit and demean himſelf as an honeſt and faithful apprentice ought to do. And the ſaid *Thomas Nagger* doth hereby, for himſelf, his executors, and adminiſtrators, covenant, promiſe, and agree to and with the ſaid *William Lyons*, his executors, adminiſtrators, and aſſigns, in manner following—(that is to ſay) that he, the ſaid *Thomas Nagger*, according to the beſt of his power, ſkill, and knowledge, ſhall and will, during the ſaid term of four years, teach and inſtruct, or cauſe to be taught and inſtructed, the ſaid *William Lyons*, in the two ſeveral trades, buſineſſes, or employments of an architect and a ſurveyor, and in all things whatſoever, incident and belonging thereto, in ſuch manner as he, the ſaid *Thomas Nagger*, now, or at any time hereafter, during the ſaid term, ſhall uſe or practiſe the ſame. And further, that he, the ſaid *Thomas Nagger*, ſhall and will well and truly pay, or cauſe to be paid, unto the ſaid *William Lyons*, or his aſſigns, during the ſaid term of four years, or during ſo much thereof as the ſaid *William Lyons* ſhall continue his apprentice, as aforeſaid, the ſeveral ſums of money, and chargeable at the ſeveral times, hereinafter mentioned, in lieu and full ſatisfaction of the board and lodging of the ſaid *William Lyons*, during the ſaid term (that is to ſay) the ſum of thirty-five pounds, of lawful money of *Great-Britain*, for the firſt year of the ſaid term; the ſum of forty pounds of like lawful money, for the ſecond year of the ſaid term; the ſum of forty-five pounds of like lawful money, for the third year of the ſaid term; and the ſum of fifty pounds, for the fourth and laſt year of the ſaid term, (unleſs the ſaid apprenticeſhip be ſooner determined at ſuch requeſt of the ſaid *William Lyons*, as is hereinafter mentioned, in which caſe the ſaid ſum of fifty pounds laſt mentioned ſhall not be paid or payable), together with a proportionable part of either of the ſaid ſums which may happen to be due at any ſooner determina-

Covenant that maſter will properly inſtruct apprentice.

And that he will pay certain allowances in lieu of boarding in his family.

tion of the ſaid apprenticeſhip, to be computed from the laſt quarterly day of payment thereof, up to the day of ſuch determination; the ſaid ſeveral and reſpective ſums of thirty-five pounds, forty pounds, forty-five pounds, and fifty pounds, to be paid and payable by four equal quarterly payments, on the twenty-fifth day of *December*, the twenty-fifth day of *March*, the twenty-fourth day of *June*, and the twenty-ninth day of *September*, in every year, the firſt payment thereof (or of ſuch proportional part of the ſaid ſum of thirty-five pounds, as ſhall be then due) to begin and to be made on the twenty-fifth day of *December*, now next enſuing; the ſame to be free and clear of all manner of deductions whatſoever; which ſaid ſeveral and reſpective ſums of thirty-five pounds, forty pounds, forty-five pounds, and fifty pounds, the ſaid *William Lyons* doth hereby, for himſelf, his executors, adminiſtrators, and aſſigns, covenant and agree to and with the ſaid *Thomas Nagger*, his executors, and adminiſtrators, to take and accept, in lieu of, and in full ſatisfaction for, his board and lodging, during the ſaid term, as aforeſaid. And moreover the ſaid *Thomas Nagger* doth hereby, for himſelf, his executors, and adminiſtrators, covenant, promiſe, and agree to and with the ſaid *William Lyons*, his executors, adminiſtrators, and aſſigns, that if the ſaid *William Lyons* ſhall happen to depart this life, at any time within twelve calendar months, to be accounted from the date of theſe preſents, he, the ſaid *Thomas Nagger*, his executors or adminiſtrators, ſhall and will return and pay unto the executors, adminiſtrators, or aſſigns of the ſaid *William Lyons*, fifty pounds of the ſaid ſum of one hundred pounds, paid by him to the ſaid *Thomas Nagger* as aforeſaid. And further, that he the ſaid *Thomas Nagger*, his executors, adminiſtrators, or aſſigns, will not require or call upon the ſaid *William Lyons* to attend to the buſineſs or concerns of the ſaid *Thomas Nagger*, his executors, adminiſtrators, or aſſigns, any more than eight hours in one and the ſame day, namely, from the hour of nine o'clock in the morning, until the hour of ſeven o'clock in the afternoon, as herein before is expreſſed, unleſs the ſaid *William Lyons* unavoidably be longer engaged about the proper buſineſs of the ſaid *Thomas Nagger*, out of his office or accounting-houſe; and in caſe the ſaid *William Lyons* ſhall be ſo employed, it is hereby declared and agreed, that all extraordinary expences which he ſhall be neceſſarily put to on ſuch account, ſhall be borne and paid by the ſaid *Thomas Nagger*, his executors, adminiſtrators, or aſſigns. And the ſaid *Thomas Nagger* doth hereby, for himſelf, his executors, and adminiſtrators, further expreſsly covenant, promiſe, and declare to and with the ſaid *William Lyons*, his executors, and aſſigns, that he will permit and ſuffer the ſaid *William Lyons*, if he ſhall think fit

Covenant that in caſe of apprentice's death maſter will return a part of premium.

Covenant that maſter will not require more than eight hours a day attendance.

Covenant that maſter will permit apprentice to quit him at the end of three years.

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and require it, freely to depart from and leave the ſervice of him the ſaid *Thomas Nagger*, his executors, adminiſtrators, or aſſigns, at the expiration of the term of three years of the ſaid term of four years, herein before mentioned, and uſe and employ the remaining year of his ſaid apprenticeſhip to his own benefit and advantage, when and as he ſhall think fit, without any hindrance or moleſtation of or by the ſaid *Thomas Nagger*, his executors, adminiſtrators, or aſſigns, or either of them, upon expreſs condition, nevertheleſs that the ſaid *William Lyons* ſhall not in that caſe claim any part of the ſaid ſum of fifty pounds, herein before ſtipulated to be paid by the ſaid *Thomas Nagger*, for the fourth year of his apprenticeſhip, theſe preſents, or any thing herein contained to the contrary thereof in any wiſe notwithſtanding. And it is hereby mutually agreed and declared, by and between the parties to theſe preſents, that in caſe the ſaid *Thomas Nagger* ſhall happen to die before the end of the apprenticeſhip of the ſaid *William Lyons*, that then and in ſuch caſe the executors or adminiſtrators of him the ſaid *Thomas Nagger*, ſhall and will, as ſoon as may be after his death, find and provide a new and other proper maſter, being an architect and a ſurveyor; and at their own charge, and without delay, turn over the ſaid *William Lyons* to ſuch new maſter, for the reſidue which ſhall be then unexpired of the term of his apprenticeſhip, upon the ſame terms, or upon terms equally advantageous to the ſaid *William Lyons*, as are contained in this indenture; and in default of ſo doing, they, the ſaid executors or adminiſtrators of the ſaid *Thomas Nagger*, ſhall and will pay unto the ſaid *William Lyons*, his executors, adminiſtrators, or aſſigns, the ſum of twenty pounds for each and every year of the ſaid term of four years, which ſhall ſo remain unexpired. And laſtly, for the true performance of the ſeveral covenants and agreements herein before-mentioned and contained on the reſpective parts of each of them the ſaid *William Lyons* and *Thomas Nagger*, their executors and adminiſtrators, to be taught, ſerved, paid, done, and performed, in manner before-mentioned, and according to the true intent and meaning of theſe preſents, they, the ſaid *William Lyons*, and *Thomas Nagger*, do bind themſelves unto each other, and unto the executors, adminiſtrators, and aſſigns, of each other, in the ſum of one hundred pounds of lawful money of *Great-Britain*, firmly by theſe preſents. In witneſs whereof, they have, each to two parts hereof, ſet their hands and ſeals the day and year firſt above written.

Covenant that in caſe of maſter's death executors ſhall provide appre tice a new maſter.

Covenant for performance of agreement.

William Lyons, (Seal.)
Thomas Nagger, (Seal.)

Sealed and delivered in the preſence of
Abraham Pateman, } *of London-ſtreet aforeſaid.*
William Foley. }

II. *A like Indenture in a ſhorter Form.*

THIS indenture, made the eighth day of *February*, in the twenty-ſeventh year of the reign, &c. and in the year of our Lord one thouſand ſeven hundred and eighty-ſeven, between *Samuel Jenkinſon* (ſon of *Daniel Jenkinſon*, of *Caen Wood*, in the pariſh of St. *Pancraſs*, in the county of *Middleſex*, farmer) and the ſaid *Daniel Jenkinſon*, of the one part, and *James Aſhley*, of *Grafton-ſtreet*, in the pariſh of *Saint Clement Danes*, in the ſaid county of *Middleſex*, ſurveyor, of the other part, Witneſſeth, that the ſaid *Samuel Jenkinſon*, by and with the conſent of his ſaid father, *Daniel Jenkinſon*, teſtified by his being party to and executing theſe preſents, hath placed and bound himſelf apprentice to the ſaid *James Aſhley*, to be taught in the ſcience, profeſſion, or buſineſs of a ſurveyor, in all its branches, which the ſaid *James Aſhley* now uſeth, or ſhall uſe or practiſe, and with him as an apprentice to ſerve from the day of the date hereof, until the thirtieth day of *June*, which will be in the year of our Lord one thouſand ſeven hundred and ninety, during all which ſaid time, the ſaid apprentice his ſaid maſter well and faithfully ſhall ſerve, his ſecrets keep, his lawful commands every where gladly do, hurt to his ſaid maſter he ſhall not do, nor willingly ſuffer to be done by others, but the ſame to his power ſhall let, or forthwith give notice thereof to his ſaid maſter; the goods, monies, or effects of his ſaid maſter, he ſhall not embezzle or waſte, nor lend them without his conſent, to any; at cards, dice, or any other unlawful games, he ſhall not play; taverns or ale-houſes he ſhall not haunt or frequent; fornication he ſhall not commit; matrimony he ſhall not contract; from the ſervice of his ſaid maſter he ſhall not at any time depart or abſent himſelf, without his ſaid maſter's leave; but in all things as a good and faithful apprentice ſhall and will demean and behave himſelf towards his ſaid maſter, and all his, during the ſaid time; and the ſaid maſter, in conſideration of the ſum of ſixty pounds of lawful money of *Great-Britain*, to him in hand well and truly paid by the ſaid *Daniel Jenkinſon*, the receipt whereof he doth hereby admit and acknowledge, his ſaid apprentice the ſaid ſcience or buſineſs of a ſurveyor, as aforeſaid, with all things thereto belonging, ſhall and will teach and inſtruct, or otherwiſe cauſe to be taught and inſtructed, after the beſt way and manner that he can; and ſhall and will teach and inſtruct, or cauſe to be taught and inſtructed, the ſaid apprentice the art or ſcience of a ſurveyor, by inſtructing him to draw architecture and of meaſuring artificers work, and ſettling workmen's

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bills, and also the manner of keeping accounts, after the Italian form; and shall and will also find and allow unto the said apprentice sufficient meat, drink, and lodging, during the said times, fit for such an apprentice; and that the said *Daniel Jenkinson* shall and will find and provide his said son *Samuel Jenkinson* with all cloaths, both linen and woollen, washing, and all and every other necessaries (except his board and lodging); and it is hereby declared and agreed, by and between the said parties to these presents, that in case the said *James Ashley* should happen to die within the first or second year from the date hereof, his executors or administrators shall and will pay or refund unto the said *Daniel Jenkinson*, his executors or administrators, the sum of twenty pounds, part of the said sum of sixty pounds; and for the true performance of all and every the several matters and things herein contained, the said *Daniel Jenkinson* and *James Ashley* bind themselves, and each binds himself to the other, in the sum of one hundred pounds: In witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above-written,

Covenant to refund part of premium in case of master's death.

Daniel Jenkinson, (Seal.)
Samuel Jenkinson, (Seal.)
James Ashley, (Seal.)

Sealed and delivered in the presence of
Thomas Gage,
Pen. Lyons, } *of Grafton-street aforesaid.*

III. *Articles of Clerkship with an Attorney or Solicitor, where the Clerk is put out by his Father.*

ARTICLES of agreement, indented, made, concluded, and agreed upon this twenty-sixth day of *July*, in the year of our Lord One Thousand Seven Hundred and Eighty-three, by and between *Augustus Hamet*, of *Lincoln's-Inn*, in the county of *Middlesex*, Gentleman, of the one part, and *Joseph Jones*, of the *Inner-Temple*, *London*, Gentleman, and *James Jones*, son of the said *Joseph Jones*, of the other part; as followeth—That is to say, the said *Joseph Jones*, for himself, his heirs, executors, and administrators, doth covenant, promise, grant, and agree to and with the said *Augustus Hamet*, his executors, administrators, and assigns, in manner and form following, that is to say, that for and in consideration of the said *Augustus Hamet's* accepting of the said *James Jones* into his service, as his clerk, and in consideration of the sum of two hundred pounds of lawful money of *Great-Britain*, in hand paid to the said *Augustus Hamet*, by the said *Joseph Jones*, the receipt of which

Father covenants for his son's due service.

ſaid ſum, he the ſaid *Auguſtus Hamet* doth hereby acknowledge, and alſo in conſideration of the covenants and agreements herein after in theſe preſents mentioned, on the part and behalf of the ſaid *Auguſtus Hamet*, his executors, and adminiſtrators, to be performed, fulfilled, and kept, he the ſaid *James Jones* ſhall and will well, faithfully, and diligently ſerve him the ſaid *Auguſtus Hamet*, as his clerk, in the practice and profeſſion which he the ſaid *Auguſtus Hamet* now follows of an attorney or ſolicitor in his Majeſty's Courts of King's Bench and Exchequer, at *Weſtminſter*, from the day of the date hereof, for and during the term of ſix years from thence next enſuing, and fully to be complete and ended; and that without the wilful or negligent cancelling, obliterating, ſpoiling, loſing, embezzling, lending, ſpending, or making away with any of the books, papers, deeds, writings, monies or other goods or chattels of the ſaid *Auguſtus Hamet*, his executors or adminiſtrators, or the books, papers, deeds, writings, monies, goods or chattels of any other perſon or perſons, committed to the cuſtody or care of the ſaid *Auguſtus Hamet*, or of the ſaid *James Jones*, as his clerk. And further, that the ſaid *Joſeph Jones*, his executors or adminiſtrators, ſhall and will, from time to time, and at all times hereafter, during the ſaid term of ſix years, at his and their own proper coſts and charges, find and provide for the ſaid *James Jones*, during the ſaid term, all manner of cloaths and apparel, both linen, woollen, and otherwiſe, fit for the uſe and wear of the ſaid *James Jones*, as clerk to the ſaid *Auguſtus Hamet* as aforeſaid; and alſo waſhing, mending, and repairing thereof; and the ſaid *James Jones* doth hereby promiſe and agree to ſerve the ſaid *Auguſtus Hamet*, during the ſaid term, in manner above ſpecified. And further, the ſaid *Joſeph Jones* ſhall and will, within the time appointed by Act of Parliament, pay to his Majeſty's revenue of the ſtamp duties, the tax or duties impoſed upon monies given with clerks and apprentices, and indemnify and ſave harmleſs the ſaid *Auguſtus Hamet*, his executors and adminiſtrators, of and from the ſame in every reſpect. In conſideration of which true and faithful ſervice, to be performed and done by the ſaid *James Jones*, and of the performance of the covenants and agreements, and other the matters and things herein before ſpecified, according to the true intent and meaning of theſe preſents, he the ſaid *Auguſtus Hamet*, for himſelf, his executors, adminiſtrators, and aſſigns, doth covenant, promiſe, and agree to and with the ſaid *Joſeph Jones*, his executors, adminiſtrators, and aſſigns, by theſe preſents, in manner and form following, that is to ſay, that he the ſaid *Auguſtus Hamet* ſhall and will, during all the aforeſaid

For a term of ſix years.

And that he will not deſtroy papers, &c.

And for providing cloaths and waſhing.

Son agrees to ſerve.

Father covenants to pay the duty.

Maſter covenants to provide board and lodging.

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term of six years, find and provide for the said *James Jones* good, sufficient, and convenient diet and lodging; and also shall and will, by the best means in his power, and according to the best of his skill and knowledge, teach and instruct him the said *James Jones* in the profession, business, and practice of an attorney and solicitor, in his Majesty's courts at *Westminster*, or elsewhere, and shall and will, at the expiration of the said term, use his best endeavours (at the request, costs, and charges of the said *James Jones*,) to cause and procure him to be admitted and sworn an attorney and solicitor of his said Majesty's courts of King's-bench, and Exchequer, or such other of his Majesty's courts at *Westminster*, as the said *James Jones* shall think fit to be admitted an attorney or solicitor of. And further, that the said *Augustus Hamet* shall not nor will within the said time or term of six years assign or turn over the said *James Jones* to any attorney or solicitor, or to any other person or persons whomsoever, without the knowledge, consent, and approbation of the said *Joseph Jones*, his executors and administrators, or the direction of his Majesty's courts at *Westminster*, for the remainder or any other part of the aforesaid term. And further, that in case the said *Augustus Hamet* shall die before the expiration of the said term of six years, the executors and administrators of him the said *Augustus Hamet* shall and will pay, or cause to be paid to the said *Joseph Jones*, or to such person or persons as shall, with the consent of all parties, take and accept the said *James Jones*, as his or their clerk, for the residue of the said term, such sum and sums of monies, and at such times as are hereinafter mentioned, that is to say, that in case the said *Augustus Hamet* shall die before the expiration of the first year of the said term, then the executors or administrators of the said *Augustus Hamet* shall within one month next thereafter pay or cause to be paid the sum of one hundred and seventy pounds in manner aforesaid; and if before the expiration of the second year, the sum of one hundred and fifty pounds; and if before the expiration of the third year, the sum of one hundred and thirty pounds; and if before the expiration of the fourth year, the sum of one hundred and ten pounds; and if before the expiration of the fifth year, the sum of ninety pounds, according to the true intent and meaning of these presents, any thing herein contained to the contrary thereof in any wise notwithstanding. And for the true performance of all and singular the respective covenants and agreements above mentioned, they the said *Joseph Jones* and *Augustus Hamet*, do bind themselves and their several heirs, executors, and administrators, each to the other of them in the penal sum of one hundred pounds of good and lawful money of *Great*

And to instruct him in his profession.

And procure his admittance.

Also not to assign him over without consent.

And that his executors shall repay part of the premium in case of his death.

Penalty for non-observance of covenants.

Britain, firmly by theſe preſents. In witneſs whereof the ſaid parties have to theſe preſents interchangeably ſet their hands and ſeals, the day and year firſt above written,

Auguſtus Hamet (Seal.)
Joſeph Jones (Seal.)
James Jones (Seal.)

Sealed and delivered by all the parties in the preſence of
Iſaac Biddulph, *John Pitts*, } *Clerks to Mr. Hamet.*

IV. *Indentures of Apprenticeſhip to a Seaman or Mariner.*

THIS Indenture, made the twenty-ninth day of Auguſt, in the year of our Lord, one thouſand ſeven hundred and ninety-four, between *Andrew Johnſon* of *Limehouſe*, in the county of *Surry*, Tallowchandler, of the firſt part, *Peter Johnſon*, ſon of the ſaid *Andrew*, of the ſecond part, and *Chriſtopher Meritone*, captain of the ſhip Caroline, of the third part, witneſſeth, that the ſaid *Peter Johnſon* doth with the conſent, and by the direction of the ſaid *Andrew Johnſon* his father, bind himſelf apprentice unto the ſaid *Chriſtopher Meritone*, as an apprentice to ſerve him the ſaid *Chriſtopher*, in the navigation of any ſhip or veſſel which the ſaid *Chriſtopher* ſhall order and appoint, for the full ſpace and term of four years from henceforth to be fully complete and ended; during which ſaid term the ſaid apprentice ſhall and will faithfully ſerve the ſaid *Chriſtopher*, and do and perform all ſuch ſervice and buſineſs, as well at ſea on board any ſhips or veſſels which ſhall belong or be employed in the ſervice of the ſaid *Chriſtopher*, and with and under ſuch perſon and perſons as he ſhall from time to time order and appoint or otherwiſe as the occaſions of the ſaid *Chriſtopher* ſhall require; and ſhall and will obey all lawful commands of his ſaid maſter, or ſuch other perſon or perſons with whom he ſhall from time to time order him to ſerve, and go in any ſhip or veſſel he ſhall be by his ſaid maſter commanded to go, and ſhall diligently and carefully demean and behave himſelf towards him and them in all reſpects. And that he the ſaid apprentice ſhall not do or willingly ſuffer to be done by others any hurt, prejudice, or damage to the goods, merchandizes, or other affairs of his ſaid maſter or any other with whom he ſhall be appointed to ſerve as aforeſaid, but the ſame to the utmoſt of his power ſhall hinder, or him or them thereof ſhall forthwith warn; he ſhall not abſent himſelf from the ſaid ſervice by day or night unlawfully; but in all things as a good and

faithful apprentice he ſhall bear and behave himſelf towards his ſaid maſter, and ſuch perſon and perſons with whom he ſhall be ordered from time to time to ſerve as aforeſaid during the ſaid term; and the ſaid maſter his ſaid apprentice ſhall and will cauſe to be taught and inſtructed in the art or buſineſs of a ſailor ſo far as ſhall be neceſſary, as to the voyages in which he ſhall be employed; and ſhall and will find and provide unto and for his ſaid apprentice ſufficient meat, drink, lodging, and cloathing, during all the ſaid term. In witneſs whereof the ſaid parties hereto have hereunto ſet their hands and ſeals, the day and year firſt above written.

Andrew Johnſon (Seal.)
P. Johnſon (Seal.)
C. Meſitane (Seal.)

Sealed and delivered in
the preſence of us,
C. B. of &c.
C. D. of &c.

V. *Condition of a Bond that an Apprentice ſhall perform his Articles.*

WHEREAS by indenture of apprenticeſhip, bearing date the thirteenth of June now laſt paſt, *James Rowen* the younger, one of the ſons of the above bounden *James Rowen* the elder, is become bound as an apprentice to the ſaid *Benjamin Bown*, in the trade, art, or employment of a Hoſier, for the term or ſpace of ſeven years from the day of the date thereof, as by the ſame indentures may appear. Now the condition of the above written obligation is ſuch, that if the ſaid *James Rowen* the ſon ſhall and do from time to time, and at all times during his ſaid apprenticeſhip, well and truly obſerve, perform, fulfil, and keep all and every the articles, covenants, clauſes, and agreements whatſoever, in the ſaid recited indentures contained, and which on his part are to be obſerved, performed, fulfilled, and kept, and ſhall and do from time to time and at all times during the ſaid term, be faithful and juſt to the ſaid *Benjamin Bown*, his executors, adminiſtrators, and aſſigns, in all his the ſaid *James Rowen* the ſon's buyings, ſellings, accounts, reckonings, receipts, payments, and all other his doings and dealings, any wiſe relating to the ſaid trade or employment, or the affairs or buſineſs of the ſame, and in all other matters and things wherein as an apprentice or ſervant he ſhall or may be employed by or concerned, for or on the behalf of the ſaid *Benjamin Bown*, his executors, adminiſtrators, or aſſigns, then this preſent obligation to be void, and of

none effect, else to remain in full force and virtue. As witneſs my hand, the day and year firſt above written. APPENDIX.

James Rowen, ſen. (Seal.)

Sealed and delivered in
the preſence of
Paul Piles, of Rathbone-place, Middleſex.

VI. *A Clauſe in Articles of Clerkſhip empowering the Maſter to aſſign.*

PROVIDED always, and it is hereby mutually declared and agreed, by and between the ſaid parties hereto, that it ſhall and may be lawful, notwithſtanding theſe preſents, to and for the ſaid *James Pennu*, at any time during the ſaid term of ſix years, to aſſign or turn over unto any other ſworn attorney or ſolicitor, or attorneys and ſolicitors of any of his Majeſty's courts at *Weſtminſter*, the ſervice and benefit of the clerkſhip of him the ſaid *Robert Clothier* for all or any part of the ſaid term, then to come, in ſuch manner as he the ſaid *James Pennu* ſhall think fit, ſubject nevertheleſs to the ſame covenants and articles, for inſtruction, allowance, board, and lodging, as are contained in theſe preſents.

VII. *A Diſcharge of an Apprentice from his Indentures.*

TO all to whom theſe preſents ſhall come, *John Norton*, of *Weſtminſter*, in the county of *Middleſex*, Gent. ſends greeting. Whereas *Charles Dod*, ſon of *Edward Dod*, of *Mile-end*, in the ſaid county, did by his indenture of apprenticeſhip, bearing date on or about the tenth of May, one thouſand ſeven hundred and ninety-nine, put himſelf apprentice unto *Ralph Bertie*, of *London*, for the term of five years from the date thereof, as by the ſaid indenture may appear; and whereas the ſaid *Charles Dod* was afterwards turned over or aſſigned to *George Hammond*, of *Swanſea*, as by indorſement on the ſaid indenture may alſo appear. And whereas differences aroſe between the ſaid *George Hammond* and *Ralph Bertie*, and the ſame were referred and ſubmitted to the judgment and determination of *Henry Willett*, who, upon hearing the ſaid matters has adjudged and ordered that the ſaid *George Hammond* ſhall return and pay back the ſum of thirty pounds to the ſaid *Edward Dod* the father, and thereupon the ſaid indentures of apprenticeſhip to be delivered up by each party, and cancelled. And whereas in purſuance of the ſaid award, or order, the ſaid *George Hammond* hath paid back the ſaid ſum of thirty pounds, and the ſaid indentures have been delivered up and

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cancelled; *(but if there has been no arbitration, say)* (And whereas the ſaid *George Hammond* at the requeſt of the ſaid *Edward Dod* the father, and *Charles Dod* the apprentice, hath diſcharged the ſaid *Charles Dod* from his ſervice, and the ſaid indentures are delivered up by the ſaid parties and cancelled.) Now therefore know ye that the ſaid *George Hammond* hath remiſed, releaſed, and for ever diſcharged, and by theſe preſents doth for himſelf, his executors, and adminiſtrators, remiſe, releaſe, and for ever diſcharge the ſaid *Edward* and *Charles Dod* of and from the ſaid indentures of apprenticeſhip, and all ſervice and other matters and things in the ſaid indentures contained, on their or either of their parts to be performed, and of and from all actions and cauſes of actions, ſuits, ſpecialties, covenants, agreements, clauſes, and demands whatſoever, for or concerning the ſaid indentures of apprenticeſhip, or by reaſon of any other matter or thing whatſoever, from the beginning of the world to the day of the date hereof. In witneſs whereof they the ſaid *George Hammond*, *Edward Dod*, and *Charles Dod*, have hereunto ſet their hands and ſeals, the day and year firſt above written,

George Hammond (Seal.)
Edward Dod (Seal.)
Charles Dod (Seal.)

Witneſs,
Ralph Tomins.
James Newſtead.

VIII. *A Clauſe in Indentures of Apprenticeſhip empowering the Maſter to diſcharge the Apprentice for Miſbehaviour.*

AND laſtly it is agreed by and between the ſaid parties hereto, that if the ſaid *William Roſe* ſhall for any conſiderable ſpace of time during the ſaid term, be wilfully diſobedient to the lawful orders or commands of the ſaid *James Carleton*, his maſter, or be ſlothful or negligent, or ſhall otherwiſe groſsly miſbehave himſelf toward his ſaid maſter or his family, that then in ſuch caſe it ſhall and may be lawful for the ſaid *James Carleton* to put away and diſcharge the ſaid *William Roſe* from his ſaid ſervice; and in ſuch caſe the ſaid *James Carleton*, his executors, adminiſtrators, or aſſigns, ſhall repay unto *Thomas Roſe*, *(the father of the ſaid William Roſe)* the like ſum of money as is hereby made payable upon the death of the ſaid *James Carleton*, according to the period of the ſaid term of ſervice at which he ſhall ſo put away the ſaid *William Roſe*; any thing herein before contained to the contrary thereof in any wiſe notwithſtanding.

IX. *An Agreement between a Maſter and a Servant, or Bailiff, relative to the Management of a Farm.*

ARTICLES of agreement indented, made, entered into, and concluded upon this tenth day of January, in the thirty-fifth year of the reign of our ſovereign Lord George the third, and in the year of our Lord Chriſt, 1795, between *Thomas Sampſon* of *Whitbourne*, in the county of *Dorſet*, eſq. of the one part, and *Samuel Fowler* of *Minton*, in the ſame county, yeoman, of the other part, as follows: that is to ſay, WHEREAS the ſaid *Thomas Sampſon* hath agreed with the ſaid *Samuel Fowler* to be his ſervant or agent, for the purpoſe of ordering and managing to the beſt advantage, all that meſſuage or tenement and farm, barns, ſtables, outhouſes, lands, meadows, and paſture grounds, with the ſeveral appurtenances thereunto belonging, now in the tenure and occupation of the ſaid *Thomas Sampſon*, ſituate, lying, and being in the pariſh of *Whitbourne* aforeſaid, and commonly called or known by the name of *Sampſon Farm*, for and during the term of one whole year, to commence from the fifth day of the preſent month, being Chriſtmas-Day old ſtile, and ſo from year to year as long as the ſaid *Thomas Sampſon* and *Samuel Fowler* ſhall agree, to and for the yearly ſum, ſalary or wages of 100l. payable quarterly as hereafter is mentioned. Now it is hereby covenanted, granted, concluded, and agreed upon by and between the ſaid *Thomas Sampſon* and *Samuel Fowler*, as well for themſelves as for their ſeveral executors, adminiſtrators, and aſſigns, by theſe preſents, in manner and form following; (that is to ſay) The ſaid *Samuel Fowler*, for himſelf, his executors, and adminiſtrators, doth covenant, promiſe, and agree to and with the ſaid *Thomas Sampſon*, his executors, adminiſtrators, and aſſigns, that he the ſaid *Samuel Fowler* ſhall and will at all times and ſeaſons during the ſaid term of one year, and ſo long after as the ſaid parties ſhall agree as aforeſaid, order, manage, cultivate and improve, according to the beſt of his abilities, ſkill, and knowledge, all and ſingular the lands, meadows, arable and paſture grounds; and alſo all and ſingular the cattle, ſtock, outhouſes, building, and appurtenances belonging to, and now, or any time hereafter, being upon the ſaid farm and premiſes called *Sampſon Farm*, ſituate as aforeſaid, to the greateſt benefit and advantage in all things and reſpects of him the ſaid *Thomas Sampſon*, his executors, adminiſtrators, and aſſigns. IN CONSIDERATION of which ſaid promiſe and agreement, and other the premiſes aforeſaid, he the ſaid *Thomas Sampſon*, for himſelf, his executors, adminiſtrators, and aſſigns, doth covenant, grant, and

Recital.

Agreements and covenants

From the ſervant.

From the maſter.

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agree to and with the ſaid *Samuel Fowler*, his executors and adminiſtrators, by theſe preſents, that he the ſaid *Thomas Sampſon*, his executors, adminiſtrators, or aſſigns, ſhall and will well and truly pay or cauſe to be paid unto the ſaid *Samuel Fowler*, his executors, adminiſtrators, or aſſigns, the ſaid yearly ſum, ſalary, or wages, of one hundred pounds of lawful money of Great Britain, during ſo long as the ſaid *Samuel Fowler* ſhall continue to manage the ſaid farm and premiſes for the ſaid *Thomas Sampſon*, in purſuance of theſe preſents, the ſame to be payable and paid, or otherwiſe by the ſaid *Samuel Fowler* retained out of the monies in his hands, on the four moſt uſual quarterly days of payment of rent or feaſt days in the year, that is to ſay, on the fifth day of April, the fourth day of June, the tenth day of October, and the fifth day of January, in every year, by even, and equal portions. In witneſs whereof the ſaid parties have hereunto ſet their hands and ſeals, the day and year firſt above written.

Thomas Sampſon (Seal.)
Samuel Fowler (Seal.)

Sealed and delivered in the preſence of us,
Charles Minington,
Paul Jenkins. } *of Whitbourne aforeſaid.*

X. *An Agreement between a Maſter and a menial Servant.*

ARTICLES of agreement indented, made, concluded, and agreed upon this firſt day of July, in the year of our Lord one thouſand ſeven hundred and ninety-two, between *William Styles*, of, &c. of the one part, and *Walcot Man*, of, &c. of the other part, as follows: viz. The ſaid *Walcot Man* for the conſiderations hereunder mentioned, doth covenant, promiſe, and agree to and with the ſaid *William Styles*, his executors, adminiſtrators, and aſſigns, by theſe preſents in manner following: (that is to ſay) that he the ſaid *Walcot Man*, ſhall and will for and during the term and time of five years, to begin and be accounted from the date of theſe preſents, ſerve, abide, and continue with the ſaid *William Styles*, his executors, adminiſtrators, and aſſigns, as his and their covenant ſervant, and diligently and faithfully according to the beſt and utmoſt of his power, ſkill, and knowledge, will exerciſe and employ himſelf in, and do and perform, all ſuch ſervice and buſineſs whatſoever, as well relating to the trade of a Tanner, which the ſaid *William Styles* now uſeth, as in and about ſuch other buſineſs, matters, and things whatſoever, as the ſaid *William Styles*, his executors or adminiſtrators, ſhall from time to

Covenants from the ſervant.

time order, direct, and appoint, and that to and for the beſt profit and advantage of him and them; and that he ſhall and will keep to himſelf, and in no wiſe divulge the ſecrets of the ſaid *William Styles*, his executors or adminiſtrators, relating to the ſaid trade and buſineſs, and likewiſe be juſt, true, and faithful to him and them, in all matters and things, and no ways wrongfully detain, embezzle, or purloin any monies, goods, or things whatſoever, to him or them belonging, and alſo ſhall and will keep juſt, true, and faithful accounts of all goods bought and ſold, monies received and paid, and of all other things whatſoever, relating to the buſineſs aforeſaid, as ſhall come to be committed to his care, management, or diſpoſal, and from time to time pay all monies which he ſhall receive of, or belonging to, or by order of, the ſaid *William Styles*, his executors or adminiſtrators, and make and give up true and fair accounts of all his actings and doings in the ſaid employments, without fraud or delay, when and as often as he ſhall be thereto required; *and in conſideration* of the premiſes, and of the ſeveral matters and things by the ſaid *Walcot Man* to be performed as aforeſaid, the ſaid *William Styles* doth for himſelf, his executors, and adminiſtrators, covenant, promiſe, and agree to and with the ſaid *Walcot Man*, his executors and adminiſtrators, by theſe preſents, that he the ſaid *William Styles*, his executors and adminiſtrators, ſhall and will find and provide unto and for the ſaid *Walcot Man*, in his dwelling-houſe, meat, drink, waſhing and lodging; and alſo well and truly pay or cauſe to be paid unto the ſaid *Walcot Man*, his executors and adminiſtrators, or aſſigns, the ſum of twenty pounds a year of lawful money of Great-Britain for the firſt two years of the ſaid term, by equal quarterly payments, and ſhall and will allow the ſaid *Walcot Man* all ſuch charges and expences in and about the buſineſs aforeſaid, as ſhall be juſt and reaſonable; and the ſaid parties do mutually covenant and agree to and with the other, that if the ſaid *William Styles* ſhall not be willing to continue the ſaid *Walcot Man* in his ſervice after the expiration of two years of the ſaid term, or if the ſaid *Walcot Man* ſhall not be willing to ſerve and continue with the ſaid *William Styles* after the expiration of the ſaid two years, in either of the ſaid caſes, the ſaid parties ſhall and will give ſix months notice of ſuch their minds and intention before the expiration of the ſaid term, and they ſhall reſpectively be at liberty on the one hand to part with, and on the other to depart; any thing in theſe preſents contained to the contrary notwithſtanding. As witneſs our hands this third day of May, one thouſand ſeven hundred and ninety-four.

Covenant from the maſter.

Mutual covenant.

William Styles (Seal.)
Walcot Man (Seal.)

Sealed and delivered in the preſence of
Cumings Bennet, Servant to William Styles.

XI. *An Assignment of an Apprentice.*

TO all to whom these presents shall come, I *Robert Carter* of *London* send greeting. *Whereas* my apprentice, *Andrew Baker*, has certain years yet to come and unexpired of his apprenticeship, *to wit*, three whole years from Lady Day last, as by his indenture of apprenticeship, bearing date on or about the fifteenth day of March, one thousand seven hundred and ninety-one, doth appear. *Now know ye*, that I the said *Robert Carter*, for divers good causes and considerations me hereunto moving, *have* given, granted, assigned, and set over, and by these presents *do* fully and absolutely give, grant, assign, and set over unto *Francis Jay*, of *Royston*, *Cambridgeshire*, all right, title, duty, term of years to come, service, and demand whatsoever, which I the said *Robert Carter* have in or to the said *Andrew Baker*, or which I may or ought to have in him by force and virtue of the said indenture of apprenticeship. *And moreover*, I the said *Robert Carter*, *do* by these presents covenant with the said *Francis Jay*, his executors, and administrators, that notwithstanding any thing by me the said *Robert Carter* done or to be done to the contrary, the said *Andrew Baker* shall during the said term of three years well and truly serve the said *Francis Jay* as his master, and his commandments lawful and honest shall do, and from his service shall not absent himself day or night during the term aforesaid. *Provided* that the said *Francis Jay* shall well treat and use the said *Andrew Baker*, finding for him meat, drink, linen, woollen, hose, shoes, and bedding, and all other necessaries during the said term. In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

Robert Carter (Seal.)
Francis Jay (Seal.)

Sealed and delivered in
the presence of
Baker Joyce, King-street, Bloomsbury.
Jer. Fife, Fisher-street, Red-lion-square.

XII. *An Assignment of Indentures of Apprenticeship by the Executor of a deceased Master.*

THIS indenture made the tenth day of May, in the year of our Lord one thousand seven hundred and eighty-seven, between *Caleb Joseph*, of *Vintage-street*, in the city

of *Glouceſter*, Linen-Draper, executor of the laſt will and teſtament of *David Roberts*, late of the ſame place, Haberdaſher, deceaſed, of the firſt part, *Charles Dunning*, of *London*, Gent. and *Benjamin Dunning* his ſon, of the ſecond part, and *Peter Thomas*, of *Wiley-ſtreet*, in the city of *Glouceſter* aforeſaid, of the third part. Whereas the ſaid *Benjamin Dunning* did of his own free will, by and with the advice and conſent of the ſaid *Charles Dunning* his father, by certain indentures of apprenticeſhip, bearing date on or about the twelfth day of February which was in the year of our Lord, one thouſand ſeven hundred and eighty-three, put and bind himſelf apprentice to the ſaid *David Roberts*, to be taught and inſtructed in the art, trade, or buſineſs of a Brazier, which the ſaid *David Roberts* then uſed; and to ſerve the ſaid *David Roberts* after the manner of an apprentice from thenceforth, for and during and unto the full end and term of ſeven years from thence next enſuing, and fully to be complete and ended, as in and by the ſaid indentures may, reference being thereto had, more fully appear. And whereas the ſaid *David Roberts* departed this life on or about the eighteenth day of July laſt paſt, having firſt duly made and publiſhed his ſaid laſt will and teſtament in writing, and thereby appointed the ſaid *Caleb Joſeph* ſole executor thereof, as in and by the ſaid will may appear. And whereas the ſaid *Benjamin Dunning*, at the time of the death of his ſaid maſter, had ſerved four years and upwards of his ſaid term of ſeven years, for which he was bound as aforeſaid. Now this indenture witneſſeth, that in order that the ſaid *Benjamin Dunning* may ſerve out the remainder and full term of his ſaid apprenticeſhip, and be fully taught in the ſaid art, trade, or buſineſs of a Brazier, according to the purport and intent of the ſaid recited indenture. He the ſaid *Caleb Joſeph*, at the requeſt of the ſaid *Benjamin Dunning*, and by and with the advice and approbation of the ſaid *Charles Dunning* his father, teſtified by their being parties to, and ſealing and delivering theſe preſents, hath, and by theſe preſents doth fully and abſolutely grant, aſſign, and ſet over unto *Peter Thomas*, of *Wiley-ſtreet*, in the ſaid city of *Glouceſter*, Brazier, all the right, title, intereſt, duty, ſervice, term of years, and demand whatſoever, which he the ſaid *Caleb Joſeph* hath, or can or may lawfully have in or to the ſaid *Benjamin Dunning*, under or by force or virtue of the ſaid recited indenture of apprenticeſhip, as being executor of the ſaid *David Roberts*, deceaſed, or otherwiſe howſoever. AND MOREOVER the ſaid *Caleb Joſeph* doth by theſe preſents covenant, promiſe, and agree to and with the ſaid *Peter Thomas*, his executors, adminiſtrators, and aſſigns, that notwithſtanding any matter or thing by him the ſaid *Caleb Joſeph* already done or hereafter to be done to the contrary, the ſaid *Benjamin Dun-*

Recital of former articles.

Recital of maſter's death,

and of his will.

Aſſignment.

Covenant from aſſignor.

APPENDIX.

ving shall and will well and truly serve the said *Peter Thomas* as an apprentice for and during the term of three years from the date hereof, being the remainder now to come and unexpired of the aforesaid term of seven years, and do and perform all his lawful commands during the said term; he the said *Charles Dunning* finding and providing for the said *Benjamin Dunning* his son, sufficient wearing apparel of all sorts fitting for such an apprentice. AND the said *Peter Thomas*, for himself, his executors, and administrators, doth hereby covenant, promise, grant, and agree to and with the said *Charles Dunning*, his executors, and administrators, that he the said *Peter Thomas* shall not only sufficiently teach and instruct, or cause to be taught and instructed to the best of his abilities and skill, his said apprentice in the said art, trade, or business of a Brazier, which he now uses, but also shall and will find and provide for him meat, drink, washing, and lodging, meet and convenient for such apprentice during all the said term of three years, residue and remainder of the said term of seven years as aforesaid. In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

Covenant from assignee.

Caleb Joseph (Seal.)
Charles Dunning (Seal.)
Benjamin Dunning (Seal.)
Peter Thomas (Seal.)

Sealed and delivered in
the presence of
Miles Bennet, Wiley-street, aforesaid.

XII. *An Assignment of Articles of Clerkship.*

THIS indenture made the nineteenth day of April, in the thirty-fourth year of our sovereign lord *George* the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord Christ, one thousand seven hundred and ninety-four, between *George Ponurst*, of *Wilbraham*, in the county of *Dorset*, Gent. of the first part, *Edward Sillington*, of *Marlborough*, in the county of *Devonshire*, Gent. of the second part, *Joseph Sillington*, relative of the said *Edward Sillington*, of the third part, and *Philip Pemberton*, of *Reading*, in the county of *Berks*, Gent. of the fourth part.

Recital of former articles.

WHEREAS by articles of agreement indented, bearing date on or about the eighteenth day of November, which was in the year of our Lord, one thousand seven hundred and ninety-two, and made or mentioned to be made, between the said *Edward Sillington* of the first part, the said *Joseph Sillington* of

the second part, and *George Ponurst*, therein described to be of *Wilborough*, in the county of *Somerset*, Gent. of the third part, the said *Edward Sillington* did covenant that the said *Joseph Sillington* should serve the said *George Ponurst* as his clerk, for the term of five years from thence next ensuing, and the said *George Ponurst* did for the considerations therein mentioned, thereby covenant with the said *Edward Sillington*, that he would find and provide the said *Joseph Sillington* during the said term sufficient meat, drink, washing, and lodging, and also inform and instruct him in the profession, business, and practice of an attorney and solicitor in his Majesty's courts at *Westminster*, as in and by the same articles on reference being thereto had will more fully appear. And whereas the said *Joseph Sillington* has served with the said *George Ponurst* two years of his said clerkship, and it has been agreed between the parties to the said recited indenture, that he shall now be assigned for the remainder of the said term of five years unto the said *Philip Pemberton*. Now this indenture witnesseth, that in consideration of the covenants and agreements hereafter mentioned, and other considerations the said parties thereunto moving, the said *George Ponurst* hath, and by these presents doth, at the request, by the direction, and with the approbation, as well of the said *Edward Sillington* as of the said *Joseph Sillington*, assign, transfer, and set over unto the said *Philip Pemberton*, his executors and administrators, as well the said recited articles, and all benefit and advantage whatsoever, to be had therefrom or thereof made; and also all and all manner of interest, property, profit, advantage, claim, and demand whatsoever, of the service of him the said *Joseph Sillington*, during the residue and remainder now to come of the aforesaid term of five years, by force, virtue, or means of the said recited articles, or otherwise howsoever. AND the said *Philip Pemberton* doth hereby for himself, his executors, and administrators, covenant, promise, and agree to and with the said *Edward Sillington*, and also to and with the said *Joseph Sillington*, their respective executors and administrators, in manner following; that is to say, that he the said *Philip Pemberton* shall and will at all times during the remainder of the said term of five years, instruct and inform in the best manner in his power the said *Joseph Sillington*, as his clerk, in the business or profession and practice of an attorney and solicitor in his Majesty's courts at *Westminster*, and all other courts which he the said *Philip Pemberton* now useth, or shall at any time during the said term use or practise, and in all the modes, methods, and reasons thereof. And further, that he the said *Philip Pemberton*, his executors, administrators, and assigns, shall and will from henceforth, at his and their charge, find, allow, and provide the said *Joseph*

Assignment.

Covenant for instruction.

APPENDIX.

Sillington competent and sufficient meat, drink, washing, and lodging, during all the residue now to come of the said term of five years; and thereof and therefrom save, keep harmless, and indemnified, as well the said *George Ponurst*, as also the said *Edward Sillington*, their respective executors and administrators. And also that he the said *Philip Pemberton*, his executors, administrators, or assigns, shall and will well and truly pay to the said *Joseph Sillington*, during the last two years of the said term of five years, the annual sum of twenty pounds, clear of all deductions and abatements whatsoever, for and towards his travelling and other expences, and for finding him in cloaths and other necessaries; the said sum of twenty pounds to be paid to the said *Joseph Sillington* by even half yearly payments, at Lady-Day and Michaelmas in every year. And lastly, each of them the said *George Ponurst* and *Philip Pemberton*, doth hereby for himself severally covenant with the said *Edward Sillington*, that they the said *George Ponurst* and *Philip Pemberton*, at the request, costs, and charges of the said *Edward Sillington*, at any time after the expiration of the said term of five years, shall and will make several affidavits of the respective times of service of him the said *Joseph Sillington*, with them the said *George Ponurst* and *Philip Pemberton*, and also do every other lawful act for the getting him the said *Joseph Sillington* to be admitted as an attorney, in either of his Majesty's courts at *Westminster*, as shall be needful and requisite for that purpose. In witness whereof they the said parties have hereunto respectively set their hands and seals, the day and year first above written.

Covenant to procure clerk's admission.

George Ponurst (Seal.)
Edward Sillington (Seal.)
Joseph Sillington (Seal.)
Philip Pemberton (Seal.)

Sealed and delivered in the presence of
Tim. Mollist,
Fav. Riley, } *of Reading aforesaid.*

(4)

THE LAWS RESPECTING PARISH MATTERS.

Containing the ſeveral Offices and Duties of

CHURCHWARDENS,

OVERSEERS OF THE POOR,

CONSTABLES, WATCHMEN,

AND OTHER PARISH OFFICERS.

THE LAWS CONCERNING

RATES AND ASSESSMENTS,

SETTLEMENTS *and* REMOVALS *of the* POOR,

AND OF THE POOR IN GENERAL.

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The whole laid down in a *plain* and *eaſy* Manner: in which all *technical Terms of Law* are familiarly explained.

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Up to the Preſent Time.

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THOUGH the Laws relating to the Oeconomy of a Pariſh, and the multifarious concerns which perpetually force themſelves upon the notice of Pariſhioners, ſeem to render eſſential for their ſafety and ſecurity that ſomething ſhould be compiled for their uſe ſuch a ſummary of the Laws in force reſpecting their rights and duties, as might ſerve not only as a guide for their own conduct, but to protect them againſt the impoſition and encroachment of their neighbours, yet no convenient treatiſe for this purpoſe was ever, that we know of, preſented to the public till the appearance of the firſt impreſſion of the preſent ſheets. The utility, however, of ſuch a manual has been fully evinced by the rapid

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THOUGH the Laws relating to the Police and Œconomy of a Pariſh, and the multifarious concerns which perpetually force themſelves upon the notice of PARISH OFFICERS and PARISHIONERS, ſeem to render it eſſential for their ſafety and ſecurity that there ſhould be compiled for their uſe ſuch a ſummary of the Laws in force relative to their rights and duties, as might ſerve not only as a guide for their own conduct, but to protect them againſt the impoſition and encroachment of their neighbours, yet no convenient treatiſe for this purpoſe was ever, that we know of, preſented to the public till the appearance of the firſt impreſſion of the preſent ſheets. The utility, however, of ſuch a manual has been fully evinced by the rapid

ſale of that impreſſion, which has rendered it neceſſary for us to ſatisfy the calls of the public, by preparing this *Second* Edition, to which ſuch conſiderable and important additions have been made, as, we truſt, cannot fail to render it ſtill more eminently ſerviceable to every deſcription of perſons intereſted in its contents.

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An Explanation of the Contractions made use of in this Treatise.

Amb.	Ambler's Reports.
And.	Anderson's Reports.
Atk.	Atkyn's Reports.
Bac. Ab.	Bacon's Abridgment.
Black. Com.	Blackstone's Commentaries.
Black. Rep.	Blackstone's Reports.
Bott P. L.	Bott's Poor Laws, Const's Edition.
Brow. Ch. Rep.	Brown's Reports in Chancery.
Bulf.	Bulstrode's Reports.
Bur.	Burrow's Reports.
Burn. Juft.	Burn's Justice.
Cart.	Carter's Reports.
Carth.	Carthew's Reports.
Ca. Temp. Holt	Cases in the time of Chief Justice Holt.
Ch. Rep.	Chancery Reports in the time of Car. I.
Co. Lit.	Coke's Commentary upon Littleton's Tenures
Com. Rep.	Comyn's Reports.
Comb.	Comberbach's Reports.
Cowp.	Cowper's Reports.
Cro. Eliz.	Croke's Reports in the time of Q. Elizabeth.
Cro. Car.	Do. in the time of King Charles.
Cro. Jac.	Do. in the time of King James.
Doug.	Douglas's Reports.
Dy.	Dyer's Reports.
Finch.	Finch's Law.
Fitz. N. Brev.	Fitzherbert's Natura Brevium.
Gilb. Rep.	Gilbert's Reports.
Gouldfb.	Gouldsborough's Reports
Haw. P. C.	Hawkin's Pleas of the Crown, 8vo. Edit.
Hale P. C.	Hale's Pleas of the Crown
Hob.	Hobart's Reports.
Keb.	Keble's Reports.
Leo.	Leonard's Reports.
Lev.	Levinz's Reports.
March.	March's Reports.
Mod.	Modern Reports.
Moor.	Moor's Reports.
Ow.	Owen's Reports.
P.	Page.
Plow.	Plowden's Commentaries.
Peere Will.	Peere Williams's Reports.
Prec. Chanc.	Precedents in Chancery.
Raym.	Lord Raymond's Reports.
Rep.	Reports.
Roll. Ab.	Rolle's Abridgment.
Salk.	Salkeld's Reports.
Seff. Ca.	Sessions Cases.
Sid.	Siderfin's Reports.
Show.	Showers's Reports.
Show. Par. Ca.	Showers's Parliament Cases.
Stra.	Strange's Reports.
Sty.	Styles's Reports.
Term Rep.	Term Reports in the King's Bench, by Durnford and East.
Vaugh.	Vaughan's Reports.
Vent.	Ventris's Reports.
Vern.	Vernon's Reports.
Vez.	Vezey's Reports.
Vid.	See.
Vin Abr.	Viner's Abridgment.
Will. Juft.	Williams's Justice of the Peace.
Wilf.	Wilson's Reports.

THE LAWS RESPECTING PARISH MATTERS.

CHAP. I.

OF CHURCHWARDENS.

CHURCHWARDENS are officers inſtituted for the benefit and advancement of religion, for the purpoſe of preventing profaneneſs and immorality, and to ſee that the public worſhip be performed with proper decency and reverence. 1 *Bac. Abr.* 370. But though ſuch be properly and originally their chief functions, they are at preſent conſidered as exerciſing an inferior duty, and looked upon principally as the guardians of the edifice of the church, and the *legal* repreſentatives of the pariſh body.

But when conſidered in theſe latter points of view *only*, various are the duties which belong to them; in diſcuſſing which, we ſhall, for the greater perſpicuity, enquire,

I. Who are liable to be choſen to, and who are exempt from ſerving the office of, churchwarden.

II. By whom churchwardens are to be choſen; the mode of chooſing them; and the manner of ſwearing them into office.

III. Their intereſt in, and power over, the affairs of the church; together with other their official duties and authority.

IV. Concerning their diſburſements and accounts.

V. As to their duration in office.

CHURCH-WARDEN.

I. *As to Persons liable to be chosen to the office of Churchwarden, and Persons exempted from the Duty.*

Who eligible.

Who not.

Generally speaking, all persons, inhabitants of the parish, are liable to serve the office of churchwarden, but there are yet certain persons, whom the benignant policy of the law has exempted from attendance upon any parochial duty; these are principally

Peers.

Peers of the realm, who by reason of the dignity of their rank, and their necessary attendance in the great council of the nation, are exempted from the discharge of all inferior offices. *Gibs. Cod.* 215.

Members of Parliament.

Members of parliament are likewise exempted, for similar reasons. *Ibid.*

Clergymen.

As also are clergymen, whose time and thoughts are supposed to be wholly occupied by the discharge of their sacred functions. *Ld. Ray.* 1107. 2 *Stra.* 1107. The same privilege is likewise, by 1 Will. 3. *c.* 18. extended to dissenting ministers on their taking the oaths of allegiance, &c.

Barristers, &c.

Barristers at law, as also attornies, have a like privilege, on account of their attendance on the courts of justice. 1 *Mod.* 22. 1 *Sid.* 431. 2 *Keb.* 477.

Clerks in Court.

Clerks in court are exempted for a similar reason. 1 *Roll. Rep.* 368. as likewise is the clerk of the King's Bench. This privilege, however, seems not to extend to the holders of such offices of the courts as may be exercised by deputy. *March.* 30.

Physicians, &c.

Physicians, surgeons, and apothecaries, are exempted by express act of parliament, see 5 Hen. 8. *c.* 6. 32 Hen. 8. *c.* 4. and 18 Geo. 2. *c.* 15.

Aldermen.

Aldermen have likewise been held to be exempted from all parish offices, because they ought always to be present in their city to see to its good government. *Cro. Car.* 585. *Doug.* 331. 6 *Mod.* 140. But in *Add. Pen. Stat.* 120. it is said that a contrary decision took place in the case of *Newnham*, alderman of *London*, in 1779.

Public Officers.

And, generally, all persons holding *any* public office which requires a *constant* and *personal* attendance, are exempted from serving parish offices: but it is otherwise where the duty is of a ministerial kind only, and can be served by deputy. *Esp. Ni. Pri.* 359.

Dissenters.

Persons dissenting from the church of England are likewise, by 1 Will. 3. *c.* 18. excused from personal service, if they are scrupulous of taking the oath, and will

provide a ſufficient deputy to be approved of by the pariſh. CHURCH-WARDEN.

Alſo perſons proſecuting felons to conviction are, by 10 and 11 Will. 3. *c.* 23. diſcharged from all manner of pariſh and ward offices within the pariſh or ward wherein ſuch felony ſhall have been committed: and this certificate may be aſſigned over, and will exempt the aſſignee. See *Burr.* 1182. Proſecutors of Felons.

And, laſtly, by 2 Geo. 3. *c.* 20. it is provided that no ſerjeant, corporal, drummer, or private man, ſerving in the militia, ſhall, during ſuch ſervice, be appointed to ſerve as a pariſh officer, without his voluntary conſent; and it ſeems that a captain in the king's guards is alſo privileged, on account of his attendance on his majeſty's perſon. See 1 *Lev.* 233. 1 *Hob.* 933. 3 *Ibid.* 309. Soldiers.

II. *Concerning the Election of Churchwardens; and the mode of ſwearing them into Office.*

1. Concerning the election of churchwarden.

By the canons of the church (can. 89 and 90, in the year 1603), it is ordained in conformity to the common law, 2 *Stra.* 1246. that churchwardens ſhall be choſen by the joint conſent of the miniſter and pariſhioners; in which caſe it ſeems that the miniſter has only a ſingle voice like any other pariſhioner. *Wood. Inſt.* 88. And if the pariſhioners and miniſter cannot agree, the miniſter ſhall chooſe one, and the pariſhioners the other, ſuch choice to be made yearly in Eaſter week; but theſe canons not having been confirmed by the legiſlature, they are obſerved in ſuch caſes only where they do not militate againſt the known laws of the realm, or the eſtabliſhed uſages and cuſtoms of particular pariſhes. See 2. *Atk.* 650. Election of Churchwardens

The election of churchwarden depends therefore (notwithſtanding the canons) chiefly upon the cuſtom which has prevailed from time immemorial, in the ſeveral pariſhes of the kingdom. Theſe cuſtoms are various.

Sometimes the election of churchwarden is in a ſelect veſtry, or a particular number of the pariſhioners, and not as in others in the pariſhioners at large. See *Hard.* 378. 1 *Mod.* 181.

In ſome places it is the cuſtom for the miniſter to chooſe one of the charchwardens, and the pariſhioners the other. *Godb.* 153. and by Lee, Ch. Juſt. where this cuſtom prevails the curate is to be conſidered as a miniſter. *Ibid.*

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But if the miniſter, parſon, or vicar, whom the cuſtom entitles to chooſe one churchwarden, be under ſentence, the right of chooſing *both* churchwardens devolves on the pariſhioners. *Carth.* 118. *Hard.* 378.

(Election in the City of London.)

In the city of London the cuſtom is for the pariſhioners of each pariſh to chooſe both the churchwardens without the aſſiſtance or interference of the miniſter; and there being a ſpecial cuſtom to that purpoſe, the *canon* cannot remove it, eſpecially in that city, where the parſon and churchwardens are a corporation to purchaſe and grant lands; for if the parſon, being himſelf one, were allowed to nominate another of the three perſons conſtituting the corporation, he would be poſſeſſed of too great a power over the pariſh intereſts, ſee *Cro. Jac.* 532. 1. *Roll. Abr.* 339.

But though the *canons* are not permitted to control the eſtabliſhed cuſtom of a pariſh, yet where the cuſtom from any particular circumſtances cannot be obſerved, it is held that the election muſt be made according to the rule of the canons; thus, where there was a cuſtom that the parſon ſhould appoint one, and the two churchwardens for the time being, the other, and the two churchwardens could not agree, it was adjudged by the court of delegates that they muſt then advert to the *canon*, which ordains that churchwardens are to be choſen by the parſon and pariſhioners jointly, and if they cannot agree, the one by the parſon, and the other by the pariſhioners. 1 *Stra.* 145.

And ſo, likewiſe, muſt all *new* pariſhes (in which no cuſtom can prevail) conform in the election of churchwardens, to the directions of the *canons*, unleſs proviſion is made for ſuch election by the act of parliament, conſtituting the pariſh. And *note*, that a cuſtom, in order to be valid, muſt have been eſtabliſhed and continued at leaſt as early as the firſt year of Rich. I. ſee 1 *Black. Com.* 77. The pariſhes in London, therefore, which were erected by 9 *Ann. c.* 22. muſt, in reſpect of election, be regulated by the canons.

In the election of churchwardens by a pariſh, the majority of pariſhioners meeting at the veſtry, in purſuance of a *written notice*, ſhall be binding on the reſt; and ſo, though no written notice of the election were given, if it be at a known place, and time; for it would be a hard caſe on the pariſh if a majority of the pariſhioners preſent could not elect on account of the wilful abſence of the reſt. *Lane* 21.

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And although the parishioners and parson (where the appointment belongs to them) neglect for an inconvenient time to choose the churchwardens, yet no other persons can proceed to make such choice, but application may be made to the court of King's Bench by any person interested to compel the proper persons to proceed to the election. 1 *Stra.* 52.

Though churchwardens are in some instances (in respect of the spiritual functions of their office) under the control of the ecclesiastical law, they are in no way accountable to the ordinary in matters of parochial concerns; and therefore it has been held, that the ordinary cannot interfere in the election of a churchwarden, nor can they control or examine into the fitness of the person elected, the parishioners being the sole and only judges in these cases; for it is not to be presumed that the archdeacon will take greater care to fill the office with an able and proper person, than those who are more interested. 1 *Salk.* 166. *Ld. Raym.* 138. 5 *Mod.* 325. Nor can the Spiritual Court try the validity of the election of a churchwarden, but that, like all other customs, must be determined by the courts of common law, as are also the validity of votes given on the election. *Cro. Car.* 552. 3 *Salk.* 88. 6 *Mod.* 89. 2 *Ld. Raym.* 108. *Bur.* 1420.

2. The mode of swearing churchwardens into office.

Swearing Churchwardens into office.

After the churchwardens have been duly elected, the first thing required of them is to take the oath of office before the archdeacon, or other ecclesiastical judge of the diocese, previous to their entering into their official duties, which is usually on the first week after Easter. It has been said, however, that churchwardens *may* officiate before they are sworn, though it is *proper* that they should be sworn first. 1 *Vent.* 267. But *quære* of this, for by canon 118. it is ordained, that the old churchwardens shall *continue* in office till the new ones be sworn. The oath is as follows:

"*You shall swear truly and faithfully to execute the office of a churchwarden within your parish, and according to the best of your skill and knowledge present such things and persons as to your knowledge are presentable by the laws ecclesiastical of this realm. So help you God, and the contents of this Book.*" *Gib. Cod.* 243.

This form was originally agreed upon between the ci-

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vilians and common lawyers, and has ſince received the ſanction of the court of King's Bench. And though it was enacted by 1 *Jac.* 1. *c.* 7 & 9, and 4 *ibid. c.* 5. that churchwardens ſhould, in addition to the above oath, be charged to preſent offenders againſt tipling, and other matters therein ſpecified, yet no alteration appears to have been made in the oaths on theſe accounts.

The churchwarden is obliged to take the oath in the form preſcribed, as the eccleſiaſtical laws are now the rule and meaſure of his duty, and on his refuſal he may be excommunicated. *Gib. Co.* 961. 1 *Mod.* 194.

And on his offering himſelf to be ſworn, the eccleſiaſtical judge is obliged to tender him the oath, and that without fee: the temporal courts will otherwiſe grant a *mandamus* to compel him. *Cro. Car.* 551. 6 *Mod.* 89. *Cowp.* 413. 1 *Salk.* 330.

III. *The Intereſt Churchwardens have in the Affairs of the Church; and other their official Duties and Authority.*

Churchwardens guardians of the Church.

Churchwardens are as we have before obſerved, the guardians or keepers of the church; and for her benefit they are to ſome purpoſes conſidered by the law as a kind of corporation; and when ſo conſidered both muſt join in the pariſh acts. *Cro. Jac.* 234. They are entruſted with the care and mangement of the *goods* and *perſonal property* belonging to the church, which they are to order for the beſt advantage of the pariſhioners, and for the recovery of which, if ſtolen, they may bring actions, &c. or may ſue the offender in the courts ſpiritual. 2 *Keb.* 23. The churchwardens, therefore, may purchaſe goods and church articles for the uſe of the pariſh. *Cro. Car.* 552. They may likewiſe with the aſſent of the pariſhioners, (but not elſe) ſell, or otherwiſe diſpoſe of the goods of the church. *Cro. Jac.* 234. 4 *Vin. Abr.* 525. but they have no intereſt in, or power over the *freehold* of the church itſelf, nor of any land, or other *real* property belonging to it; theſe are the property of the parſon, or vicar, who alone are legally intereſted in its loſs or preſervation.

If, therefore, the trees in the church-yard be cut down, or the graſs deſtroyed, or if the walls, windows, or doors of the church be broken, the incumbent (or his leſſee) and not the churchwardens, are to require a recompence for the injury. 2 *Roll. Abr.* 337. 1 *Vent.* 127. Nor can

they take lands deviſed to the pariſh for the repair, or other uſe of the church, not even though it be but a term of years. *Hetl.* 74.

Therefore, if *lands* are intended to be given to the pariſh for the uſe of the church, they ſhould be deviſed to truſtees to the uſe intended, and not to the churchwardens and their ſucceſſors, which would be a void deviſe. *Co. Lit.* 3. *Gib. Cod.* 215. and ſee the LAW OF WILLS, by the author of the preſent Treatiſe.

(As to the City of London.)

In the city of London, however, where the parſon and churchwardens, as we before obſerved, form together one individual corporation for the benefit of the church, they may purchaſe or hold *lands*, as well as *goods* for the uſe of the church. *Cro. Jac.* 325, 532. 5 *Mod.* 395.

Juriſdiction of Churchwardens

The authority of churchwardens extends over the whole pariſh of which they are choſen, although it happen to run into another hundred, or county; in which they differ from conſtables, overſeers of the poor, and other pariſh officers, who muſt be choſen for every hundred, &c. though in the ſame pariſh; the reaſon of which is, that churchwardens being employed about eccleſiaſtical matters, muſt follow the diviſion of the eccleſiaſtical juriſdiction, which is into dioceſes, archdeaconries, deanries, and pariſhes, and therefore, when it is the ſame pariſh, deanry, &c. the churchwardens authority extends over every part of the pariſh in whatever number of different hundreds or counties it be. *Shaw Par. L.* 78. and the pariſh is reputed to be within that deanry, archdeaconry, or dioceſe in which the *church* ſtands. *Ibid.* 79.

Particular duties of Churchwardens.

Having now ſufficiently conſidered the general intereſt of churchwardens in the property of the church, we ſhall proceed to enquire more minutely into the particular duties required of them, and the authority entruſted to them in the diſcharge of the other important concerns of their office; and that we may be enabled to do this the more ſatisfactorily, and in a manner the moſt convenient for practical uſe, we ſhall purſue the method of arranging in alphabetical order all the ſeveral objects of their juriſdiction. Theſe are

Altar.

ALTAR. The altar (being ſituated in the chancel which belongs to the parſon, ſee "CHANCEL,") is not within the juriſdiction of the churchwardens; they cannot, therefore, without the conſent as well of the miniſter as of the ordinary, intermeddle with the repairs or deco-

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ration thereof. Should it therefore be neceſſary to renew the railing round the altar, (which it is highly proper ſhould be kept perfect to preſerve the communion table from the profanation it might otherwiſe be expoſed to,) the churchwardens muſt be careful to obtain leave for that purpoſe, or they poſſibly may not be allowed the expence thereof in their accounts.

Apprentices.

APPRENTICES. By 43 Eliz. *c.* 2. it is enacted, that churchwardens and overſeers of any pariſh, or the major part of them, with the aſſent of two juſtices, may bind out apprentice, where they ſhall ſee convenient, any children whoſe parents are not able to maintain them—but concerning the apprenticeſhip of pariſh children, ſee more hereafter, Chap. II. Sec. ii.

Aſſeſſments.

ASSESSMENTS. When a rate is to be made for repairing the church, it is to be raiſed by aſſeſſment upon the inhabitants; but ſuch aſſeſſment is not to be made by the churchwardens, but by the pariſhioners in veſtry; it is, however, the proper buſineſs of the churchwardens to collect and diſburſe it when made. 1 *Ld. Raym.* 59.

But it is otherwiſe in regard to aſſeſſments made for relief of the poor and indigent; for the churchwardens are required by expreſs act of parliament to join with the conſtable in making aſſeſſments for the relief of maimed ſoldiers, and priſoners: as they are alſo enjoined by 43 Eliz. *c.* 2. to join with the overſeers in making aſſeſſments for relief of the poor in general.

Bells.

BELLS. It is the buſineſs of the churchwardens to keep the keys of the belfrey, and take care that the bells be rung on all proper occaſions, and on no other; the propriety of which is to be determined by the miniſter of the place and themſelves. *Can.* 88.

Benefices.

BENEFICES. Churchwardens have the care and management of benefices during a vacancy, firſt taking out a *ſequeſtration* from the Spiritual Court. They are to plough and ſow the glebe; get in the crop; collect the tythes; threſh out and ſell the corn; repair buildings, and manage all profits and expences for the benefit of the ſucceeding incumbent.

They are alſo to take care that the church be duly ſerved by a curate, to be approved of by the biſhop, and paid by them out of the profits of the benefice. 1 *Will. Juſt.* 484.

This ſequeſtration does not, however, ſeem to be a matter of right in the churchwardens, but may be, as it

frequently is, granted to a neighbouring clergyman, or ſome other perſon, at the diſcretion of the court. See *Shaw's P. L.* 97. CHURCH-WARDEN.

BRIEFS. On receipt of a brief, the churchwardens ſhall, by 4 An. *c.* 14. indorſe on the back thereof, the time of receiving the ſame, and ſubſcribe their names thereto, and forthwith deliver ſuch brief to the miniſter of the pariſh. It is alſo the province of the church wardens to collect and receive all monies which ſhall be given in purſuance of ſuch brief; and the ſum they ſhall ſo receive, together with the place where, and the time when the ſame was received, they are to indorſe in words at length on the back thereof, and ſign their names thereto: and further, when the ſaid brief ſhall be ſo indorſed, they ſhall, on requeſt made by the undertaker thereof, or other perſon by him lawfully authorized, deliver the ſame to him, with the money collected thereon, taking his receipt for the ſame in a book which they ſhall keep for that purpoſe, and theſe regulations are enforced by a penalty of 20*l.* in caſe of negligence therein. Briefs.

BURIALS. Every perſon has a right to be interred in the church-yard of his own pariſh, and the churchwardens cannot diſſent therefrom, or demand any fee for the burial; but their conſent muſt be had for the burying of perſons in a different pariſh than that in which the perſon dies. *Gibſ. Cod.* 453. *Hob.* 175. Burials.

The churchwardens cannot, however, give permiſſion for any one to be buried within the *church*, without a licence from the miniſter, this being the excluſive privilege of the parſon, to whom belongs the ſoil and freehold of the church; though they may by cuſtom receive a fee for ſuch burial, becauſe the pariſh is at the charge of repairing the floor. 23 *Keb.* 504, 523. *Cro. Jac.* 367.

But where a burying-place in the church belongs by ſubſcription to a manor-houſe, or the like, as is ſometimes the caſe, no licence from the miniſter is requiſite. *Gibſ. Cod.* 453.

It is likewiſe the duty of churchwardens to prevent perſons who are found by the coroner's verdict to have murdered themſelves, as alſo excommunicated perſons, from being buried in the church, or church-yard, without a ſpecial licence from the biſhop of the dioceſe.

And by 30 *Car.* 2. *c.* 3. churchwardens are required to give information to a magiſtrate, by the certificate of the

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miniſter, concerning offenders againſt that act, for not burying in woollen.

Certificates.

CERTIFICATES. The churchwardens, together with the miniſter, are by 3 Geo. 3. *c.* 16. required to ſign certificates for the out penſioners of Greenwich Hoſpital reſiding in their reſpective pariſhes, in regard to the identity of their perſons, in order that they may be enabled to receive their penſions.

Chancel.

CHANCEL. The chancel belongs to the parſon as part of his glebe. The churchwardens are not therefore bound to repair it (except in London, and ſome other places. See REPAIRS. Nor have they any authority therein, either for erecting ſeats, or otherwiſe, without leave obtained of the miniſter and the ordinary. They are, however, to ſee that it be kept in due repair, and order, and to preſent the defects if any, to the biſhop. See can. 80. and ſee REPAIRS.

Church.

CHURCH. It belongs to the churchwardens to take care, in every reſpect, of the church and its appendages; they are to ſee that it is properly aired when occaſion requires; to keep it clean and in good repair; they are to provide, where wanting, at the pariſh expence, a decent communion table, with the ten commandments fixed up at the eaſt end of the church; a reading deſk and pulpit; a large church bible; a book of common prayer; a book of homilies, and an alms-box; and alſo all requiſites for the communion ſervice, chriſtenings, and other ceremonies. *Can.* 80. &c. 1 *Sid.* 301. 3 *Salk.* 88. See alſo REPAIRS and ORNAMENTS.

Churchwardens are to ſee that all the pariſhioners regularly reſort to their pariſh church, and continue there during divine ſervice; they are alſo to prevent any irreverent or diſorderly behaviour at church, and may, without being guilty of an aſſault, take off a perſon's hat, or even turn him out of the church, if he diſturb the congregation. 1 *Saund.* 13. They may likewiſe take before a juſtice any who may offend in either of thoſe particulars, and make them pay the penalties of 1 Eliz. *c.* 2. See the words "PENALTY," and "PRESENTMENT."

Churchways.

CHURCHWAYS. It is the buſineſs of the churchwardens to keep the ways leading to the church in good repair, for the convenience of the pariſhioners. 2 *Roll. Abr.* 287.

Churchyard.

CHURCH-YARD. Various canons have ordained regulations reſpecting the church-yard of a pariſh, the obſerv-

ance of all which are under the care of the churchwardens. It is to be kept in a good and paſſable ſtate as to paths and ways leading to the church; it is to have ſurrounding walls, rails, or pales, as has been accuſtomed, which are to be maintained in good repair at the charge of thoſe to whom by law it appertaineth: this is generally the pariſh; but perſons who have land adjoining to a church-yard are ſometimes bound by cuſtom to keep the fences in repair. See 2 *Inſt.* 481. 2 *Roll. Abr.* 287. But though it ſhould belong to the pariſh to repair them, yet the churchwardens are not authorized to uſe for that purpoſe the trees growing in the church-yard, they belonging to the parſon. See "TREES." The churchwardens are to ſee that no plays, feaſts, church-ales, drinkings, temporal courts, lay juries, muſters, nor any profane uſage whatſoever, be kept or had in the church-yard; they are not to permit any idle perſons to abide therein, or in the church porch during divine ſervice; nor any tumult, or indecency, during the rites of burial. *Can.* 19. 88, 91. alſo 1 *Mod.* 168. CHURCHWARDEN.

COMMUNION. See SACRAMENT and ORNAMENTS. Communion.

COUNTY RATE. By 12 Geo. 2. *c.* 29. it is enacted, that the churchwardens and overſeers of the poor in every pariſh ſhall, within 30 days after notice in writing to them given, or affixed to the door of the church, pay out of the money collected for relief of the poor, unto the high conſtable of the diviſion, ſuch ſums as ſhall be rated upon the pariſh by any general or quarter ſeſſions; and in default therof, the ſame may be levied upon them by diſtreſs under warrant of two juſtices. County Rate.

DISBURSEMENTS. If the churchwardens expend money for repairs, or otherwiſe, by order of the veſtry, they may recover it of the new churchwardens, if not ſooner repaid, who will be allowed it in their accounts. 4 *Vin. Abr.* 529. Diſburſements.

ENGINE. By ſtat. 6 Ann. *c.* 31. The churchwardens of every pariſh within the bills of mortality are required to provide and keep a large fire engine, and a hand-engine with proper accoutrements, under penalty of 8*l.* They are alſo to fix ſtop blocks, and fire cocks upon the pipes belonging to the waterworks, and mark upon the front of ſome oppoſite houſe the place where they are to be found, and in ſuch houſe an inſtrument for opening the plugs ſhall be kept. Fire Engine.

FORFEITURES. See PENALTIES. Forfeitures.

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Goods of the Church.

GOODS. The goods of the church are under the care of the churchwardens and they may maintain an action for them if ſtolen or damaged; and if the churchwardens for the time being have neglected to bring ſuch action, the new churchwardens may do it. *Cro. Eliz* 145.

Greenwich Hoſpital.

GREENWICH HOSPITAL. See CERTIFICATE.

Hawkers and Pedlars.

HAWKERS and PEDLARS. By 9 and 10 Will. 3. *c.* 27. churchwardens are authorized and required to apprehend and carry before a juſtice, all hawkers and pedlars trading without a licence.

Lead, &c.

LEAD. By 29 Geo. 2. *c.* 30. any two juſtices are authorized to direct lead, iron, copper, braſs, bell-metal, and ſolder which may have been ſtolen, to be depoſited in the hands of the churchwardens or overſeers of the pariſh where found, for the ſpace of 30 days: and ſuch churchwardens or overſeers upon receipt thereof, are to cauſe ſuch advertiſements to be made for diſcovering the owners as the ſaid juſtices may order.

Library.

LIBRARY. By 7 An. *c.* 14. (relative to parochial libraries) ſuch libraries are entruſted to the care of the ordinary, and incumbent; but in caſe of a vacancy in the cure, it is the duty of the churchwardens to ſee that they are locked up and kept from depredation.

Lord's Da.

LORD'S DAY. See SABBATH.

Lunatics.

LUNATICS. By 17 Geo. 2. *c.* 5. If any perſon by reaſon of lunacy or madneſs be unfit to go abroad, he ſhall, by order of two juſtices, directed to the churchwardens, overſeers, conſtables, &c. or any of them, be apprehended and ſafely ſecured, locked up, or chained, as there may be occaſion: the charges of confining and keeping him to be defrayed by like order of juſtices, directing the churchwardens or overſeers where any lands, or goods of ſuch perſon are, to ſeize and ſell the ſame, or receive the rents and produce thereof, and account at the next quarter ſeſſions; but if ſuch perſon have no eſtate, then he is to be maintained by his proper pariſh. But the ſaid act not to abridge the king's prerogative, or power of the lord chancellor, or prevent any friend of the lunatic taking care of him.

Militia.

MILITIA. After aſſeſſments have been made for the ſupport of the militia, and notice thereof given to the churchwardens, it is their duty to rate and levy the money upon the pariſh; and they are empowered by 26 Geo. 3. to pay to perſons choſen by lot to ſerve in the militia, a ſum not exceeding 6*l.* within a month after their enrol-

ment. They may alſo, with the conſent of a veſtry, provide volunteers for the militia, and rate the bounty money (if approved of by two juſtices) on the inhabitants, which bounty money may, by 34 Geo. 3. extend to 10*l.* CHURCHWARDEN.

They may likewiſe make pecuniary contracts to indemnify perſons from ſerving in the militia.

And, further, it belongs to the churchwardens to provide cheſts, &c. to preſerve the arms, clothes, and accoutrements of the militia. See 20 Geo. 3. *c.* 19 and 26 *ibid. c.* 107 and 34 Geo. 3. *c.* 16.

MINISTER. See PARSON. Miniſter.

MONUMENTS. The monuments, tombſtones, &c. within the church and churchyard, are under the care of the churchwardens, who may maintain an action againſt thoſe who may have deſtroyed or defaced them: and if the churchwardens be themſelves guilty of ſuch offence, or groſsly connive at the ſame, an action may be had againſt them by the heir or executors of the deceaſed. *Godb.* 279. *Cro. Jac.* 367. Monuments.

ORGAN. The organ as being the property of the pariſh, is under the care of the churchwardens, who may ſupport an action againſt thoſe who may have ſtolen, damaged, or defaced it—and the organiſt is to be paid by the churchwardens out of the pariſh money. *Show. Par. L. c.* XV. Organ.

ORNAMENTS. It is the buſineſs of the churchwardens to provide, at the expence of the pariſh, the decent ornaments of public worſhip and religious ceremonies: the principal of which are the communion table, coverings of the communion cups; bread and wine for the ſacrament; candles; bible, and other books appointed to be read in churches; ſurplice; pulpit cloth, and cuſhion. 2 *Roll. Abr.* 291. Ornaments.

PARSON. It is amongſt the duties of the churchwarden to ſee that the parſon or miniſter does his duty by the pariſh, in performing the ſacred functions of his office according to the rites of the church of England, and to preſent any deficiency therein to the ordinary at the Eaſter viſitation: and the like is to be obſerved in reſpect of the reader and lecturer whom, when there are ſuch, they are to ſee duly choſen by the pariſh in veſtry aſſembled, and to whom they are to pay their reſpective ſtipends. See alſo PREACHER. Parſon.

PEWS. See SEATS. Pews.

PENALTIES. When penalties or forfeitures are di- Penalties.

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rected by act of parliament to be given to the poor, it is the buſineſs of the churchwardens, together with the overſeers, to receive and diſtribute them.

Churchwardens are likewiſe required, by 1 Eliz. *c.* 2, to levy the ſum of 12*d.* upon all perſons not reſorting to the pariſh church on Sundays, and other holy days. And by 1 Car. 1. the ſum of 3*s.* 4*d.* for uſing unlawful ſports on thoſe days: and ſee SABBATH.

Penſioners.

PENSIONERS. See CERTIFICATES.

Poor.

POOR. When the poor were ſupported by voluntary contributions of the monaſteries, &c. churchwardens were the ſole guardians of the poor in their reſpective pariſhes; but this reſource failing on the abolition of thoſe ſectaries, *overſeers* were, by 43 Eliz. *c.* 2. appointed for the expreſs purpoſe of ſeeing that the induſtrious and indigent were ſufficiently ſupported. Churchwardens are ſtill, however, by the common law, overſeers of the poor in every pariſh, and they have alſo by the ſaid act of 43 Eliz. a concurrent authority with the *overſeer* in the exerciſe of their ſeveral duties relative to the poor, but having the concerns of the church more particularly to attend to, the care of the poor is now uſually entruſted to the overſeers elected.

Preſentments.

PRESENTMENTS. Churchwardens are ſworn by their oath of office to preſent, or certify to the biſhop, at leaſt once in every year, (or oftener if they think proper) all ſuch things as are *preſentable* by the eccleſiaſtical law; theſe are, principally,

1. Encroachments on the church-yard.

2. Perſons not reſorting to the pariſh church; not receiving the ſacrament, &c.

3. Perſons committing any irreverence, or indecency, during church or burial ſervice. 1 *Saund.* 13.

4. Recuſants, or perſons denying the king's ſupremacy over the church. 3 *Jac.* 1. *c.* 4.

5. Drunkards and tiplers.

6. And generally all matters relative to any defect in the duty of the miniſter, the religious or moral conduct of the pariſhioners, or the repairs of the chancel; all which things are or ought to be ſpecified and delivered in writing to the churchwardens at the time of their being ſworn: but in making ſuch preſentments, care is to be taken that they be not maliciouſly made of perſons who are innocent of the charge alledged againſt them, as an action will in ſuch caſe lie againſt the churchwardens for damages. *Cro. Car.* 285.

PREACHERS. It is the duty of the churchwardens to ſee that every new preacher is properly qualified by licence from the biſhop; and unleſs he produce ſuch licence, they are not to ſuffer him to preach. They are alſo to require ſuch new preacher to ſubſcribe his name in a book, to be kept for that purpoſe, with the day on which he preached, and the name of the biſhop who appears to have granted his licence. *Can.* 50, 52. Preachers.

PULPIT. The pulpit of a church is excluſively the property of the parſon of the pariſh, for the time being; the churchwardens, therefore, cannot let any other miniſter have the uſe of it without *his* conſent, not even though ſuch other miniſter be appointed to preach by the ordinary. 1 *Salk.* 87. 1 *Mod.* 433. Pulpit.

RATES. When a rate is to be made for the repairs of the church, the churchwardens are to ſummon a veſtry of the pariſhioners, a majority of whom preſent will bind the pariſh; and that without the concurrence of the churchwardens, who have no greater voice in reſpect to a rate than any other pariſhioner; unleſs, indeed, the pariſhioners refuſe to meet on notice given, or when aſſembled, refuſe to make any rate; in which caſes the churchwardens may make one of their own authority: for as they are liable to be puniſhed by the eccleſiaſtical courts if the church be out of repair, it would be unjuſt that they ſhould ſuffer by the obſtinacy of others. 1 *Mod.* 97, 194. 3 *Term Rep.* 592. And it is immaterial whether perſons reſide in the pariſh, or not, for holding land in the pariſh entitles them to attend the veſtry, and vote for the rate. 5 *Co.* 57. And the rector, or vicar, without hav- any land in the pariſh, is entitled to vote, becauſe having the freehold of the church in him, he has a ſpecial intereſt in ſeeing that proper rates are made for keeping it in repair. *Wood. Inſt.* 90. Rates.

And hamlets though they have a chapel of eaſe are nevertheleſs rateable to the repairs of the pariſh church. *Hob.* 66.

The rate, when agreed upon, is to be levied by the churchwardens upon every occupier of lands or houſe within the pariſh, whether he reſide in the pariſh or not; and where land is let out to farm, the rate is to be laid not on the landlord but on the tenant or occupier of the ſoil. 5 *Co.* 57. *Wood Inſt.* 90. *Netl.* 130.

It has been a queſtion whether the church rate is a charge upon the *land* or upon the *perſon* only, in reſpect

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of the land; but the latter ſeems to be the better opinion, as, if the occupier refuſes to pay it, his land cannot be ſequeſtered. 1 *Mod.* 104. 2 *ibid* 255. There have alſo been different opinions as to whether lands, &c. belonging to perſons reſident out of the pariſh ſhall ſubject the owner to be rated for the repairs of the fabrick of the church only, or to the ornaments and other incidental charges alſo; but the more recent authorities ſanction the latter opinion, to which the modern practice alſo conforms.

But the parſon of the pariſh is held not to be rateable to the repairs of the church, in reſpect to his glebe lands, becauſe out of thoſe he is obliged to repair the chancel; if, however, he has any other lands in the pariſh, he is equally chargeable in reſpect of ſuch lands as any other pariſhioner, and ſo likewiſe is he chargeable in reſpect of his glebe lands lying in any other pariſh than that of his cure; for in ſuch other pariſh he is not liable to the repairs of the chancel, which is the only reaſon of his exemption from rates to the repairs of the church. *Shaw.* 106.

Though the inhabitants, we have ſeen, are chargeable to the church rates in reſpect of their houſes or lands, yet this rule ſeems to be obſerved only as an indication of their ability: for though poſſeſſed of theſe, yet if they are ſo poor as not to be chargeable to the poor rates, they are nevertheleſs excuſed from the church rate, and are likewiſe precluded from voting in regard to it. *Shaw* 107.

If any one refuſe to pay the rate he is aſſeſſed with, the churchwardens may ſue him in the eccleſiaſtical court, and there only. *Gib. Cod.* 219. But, in the caſe of refuſal by a Quaker, they may (if they prefer that mode) apply to a juſtice of the peace, who, by 7 and 8 Will. 3. *c.* 35. is empowered to levy the rate by diſtreſs. See word "VESTRY."

If the churchwardens defer making or gathering their rate till their office has expired, they are deprived of all legal authority of doing either, unleſs they have previouſly made preſentment of the defaulters, for which reaſon they ought to take care to gather in the rate as ſoon as it can conveniently be done, and proſecute before the expiration of their office, thoſe who refuſe to pay the ſums they are rated at; or, if this be neglected, preſent the defaulters at the Eaſter viſitation, when they go out of office; in which caſe they will ſtill have authority to recover their arrears. If, however, neither of theſe things have been done, they muſt transfer the ſums in arrear to

their ſucceſſors, who have authority to recover them for the uſe of the pariſh. CHURCH-WARDEN.

REGISTER. The pariſh regiſter book is to be found by the churchwardens, and kept by them in a box provided for the purpoſe, with three locks, two of the keys of which are to be kept by them, and one by the miniſter of the pariſh.

It is alſo their duty, on every Sunday, to ſee that the miniſter enters in ſuch regiſter, all weddings, chriſtenings, and burials, which may have happened in the preceding week, and at the bottom of each page of the ſaid regiſter, they, together with the miniſter, ſhall ſubſcribe their names, and on the 25th day of March in every year, or within a month after, ſhall tranſmit to the biſhop of the dioceſe, a copy of ſo much of the regiſtry as ſhall have been made within the year immediately preceding. *Gibſ. Cod.* 229.

REPAIRS. The pariſh being bound to keep the pariſh church in good repair, the churchwardens are authorized of their own accord to do the common and neceſſary repairs; but if they would erect any thing anew, as a new gallery, or the like, or make any other material improvement or alteration, it behoves them to call a veſtry, and obtain the conſent of the majority of the pariſhioners preſent, and alſo a licence from the ordinary. 1 *Mod.* 73. But though the churchwardens need not conſult either the pariſh or ordinary, as to neceſſary repairs about the fabric of the church, yet it undoubtedly becomes them, before they enter upon any very expenſive amendments, to take the opinion of thoſe who are eventually to bear the coſt. Should they, however, unkindly, act without the concurrence of the pariſh, they have full authority ſo to do, and the money by them honeſtly and *bona fide* expended muſt be repaid, however improvidently it may have been laid out: an obſervation which the author has been induced to make in order to caution pariſhes againſt chooſing indiſcreet perſons to this important truſt. Repairs.

The conſequence of the pariſh neglecting the repairs of the church is, that the pariſhioners will be excommunicated by the eccleſiaſtical court: ſhould, however, any of the inhabitants be willing to contribute their ſhare, they will be abſolved till the majority comply. *Comp. Incumb.* 388.

But though the pariſh is bound to keep the fabric of the church and its appendages in repair, it is otherwiſe

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with reſpect to the *chancel*, which belongs to, and is to be repaired by the parſon, or the lay impropriator; except indeed, in the cities of London and Norwich, and ſome few other places, where by ſpecial cuſtom the chancel is, together with the church, under the ſuperintendence of the churchwardens. 1 *Ld. Raym.* 39. See alſo ALTAR, CHANCEL, CHURCH, CHURCHYARD, CHURCHWAYS, SEATS, TREES.

☞ We truſt the goodneſs of our intentions will here plead our excuſe for introducing to the conſideration of churchwardens a prudential remark of an old writer upon the ſubject of pariſh buſineſs, viz. that as well diſpoſed minds are deſirous of avoiding not only guilt itſelf, but the bare ſuſpicion of guilt in the diſcharge of their truſt, "it would be well if they would not accept of any entertainment from the workmen they employ, or the perſons of whom they buy their materials, nor make uſe of any materials which their own buſineſs may happen to ſupply them with, without firſt calling in ſome principal inhabitants of the pariſh, and agreeing with them as to the value thereof." *Shaw.* 86.

Sabbath.

SABBATH. It is the duty of the churchwardens to ſee that the Lord's day is duly obſerved: and that they may be the better enabled to enforce ſuch obſervance, they are authorized and required by various ſtatutes to levy pecuniary penalties in a variety of caſes: as,

If any one do any work or worldly buſineſs on that day, (except works of neceſſity and of charity) he ſhall forfeit 5*s.*

If any one expoſe to ſale any goods or wares (except meat and other proviſions in victualling houſes, ready dreſſed) the ſame ſhall be forfeited: and butchers ſelling meat on this day, ſhall forfeit 6*s.* 8*d.* for each offence.

Theſe penalties, however, do not extend to bakers ſelling bread, or baking victuals on a Sunday. 5 *Term Rep.* 449. only that by 34 Geo. 3. *c.* 61. bakers within 12 miles of London are forbidden to bake meat, pies, &c. except between 9 o'clock in the morning and 1 in the afternoon.

Carriers, carters, drovers, butchers, higlers, or their ſervants, travelling on a Sunday, ſhall forfeit each 20*s.*

Perſons uſing or travelling with any boat, wherry, barge, or lighter, (unleſs in extraordinary caſes to be allowed of by a juſtice) ſhall forfeit 5*s.*

Perſons exerciſing rude and noiſy ſports ſhall forfeit

each 3*s.* 4*d.* this, however, does not extend to manly exercises decently conducted. CHURCHWARDEN.

All of which penalties are to be levied by the churchwardens, by warrant from a juſtice or other chief magiſtrate of the place, and applied for the benefit of the poor.

It is alſo the duty of churchwardens to viſit, both in churchtime and out of it, taverns and public houſes, to ſee that none are tippling there; and if any be, to levy upon them, in manner aforeſaid, 3*s.* 4*d.* and 10*s.* on the maſter of the houſe, for entertaining them; ſuch ſums to be applied as before mentioned. See PRESENTMENT.

SACRAMENT. It is the buſineſs of the churchwardens to provide, at the pariſh expence (under the direction of the miniſter), bread and wine for the communion, together with all things neceſſary for taking the ſacrament in the accuſtomed manner. *Can.* 20. Sacrament.

SEATS. The churchwardens are to erect and keep in repair, pews and ſeats in the church for the convenience of the pariſhioners attending divine ſervice. But as, when erected, they become fixed to the freehold, which is in the parſon, they cannot be removed by the churchwardens, without the conſent, as well of him as the ordinary, unleſs by ſpecial cuſtom, as in the city of London, where they are at the diſpoſal of the churchwardens under the control of the pariſh. *Raym.* 246. 1 *Bac. Abr.* 373. Seats.

And ſo, though the ſeats are erected and repaired by the pariſh, yet the ordinary, and not the churchwardens, (unleſs in the city of London) has the diſpoſal thereof amongſt the pariſhioners, to whom, therefore, all controverſies concerning them are to be referred. 2 *Roll. Abr.* 288.

SUNDAY. See SABBATH.

SURVEYORS. By 13 Geo. 3. *c.* 78. churchwardens, together with the conſtable, the ſurveyors of the highways for the time being, and the aſſeſſed houſeholders of the pariſh, are to aſſemble in the church or chapel at eleven o'clock in the forenoon on the 22d of September in every year, and the major part of them ſo aſſembled, ſhall make out a liſt of ten perſons, if there be ſo many living within the pariſh or diſtrict, who have an eſtate in lands, tenements, or hereditaments therein, either in his own or wife's right, of the value of 10*l.* a year, or a perſonal eſtate of the groſs value of 100*l.* or be occupier of a tenement or lands of the yearly value of 30*l.* and if there ſhall not be ſo many as ten of this deſcription, then to make up the number with other able inhabitants of the place, to Surveyors.

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ſerve the office of ſurveyor of the highways for the year enſuing, which liſt is afterwards to be preſented by the conſtable to the juſtices at their ſeſſions. See alſo CONSTABLE, and HIGHWAYS.

And by the ſame ſtat. it is the buſineſs of the churchwardens and overſeers to take charge of the books and accounts of aſſeſſment tranſmitted to them by the ſurveyor of the highways of the pariſh.

Trees.

TREES. The ſoil of the churchyard belonging to the parſon, the trees growing therein cannot, without his conſent, be cut down by the churchwardens for the repairs of the church, or other pariſh purpoſes.

Veſtries.

VESTRIES. We have ſeen under the word RATES, that previous to the making a rate the churchwardens are to ſummon a general veſtry of the inhabitants; of this they are to cauſe public notice to be given on the Sunday before, either in the church after divine ſervice is ended, or at the church-door as the pariſhioners depart, and in giving ſuch notice, the time and place, and alſo the purpoſe of the meeting, ought to be mentioned; it is uſual alſo to toll one of the church bells for a ſhort time before the hour of meeting, that it may not inadvertently ſlip their memories.

Every pariſhioner aſſeſſed to pay ſcot and lot, or church-rates, as alſo the rector, vicar, or curate, though not ſo aſſeſſed, and likewiſe other perſons occupying land in the pariſh, whether reſident there or not, have a right to attend at the veſtry and vote upon the matters there propounded. 1 *Stra.* 624. 2 *Ld. Raym.* 1388. 8 *Mod.* 52, 351. 4 *Burn Eccl. Law*, 7. And the votes of the major part of the pariſhioners preſent at the veſtry bind the whole pariſh. *Vent.* 367. 1 *Bac. Abr.* 373. Or if the pariſhioners do not attend, the churchwardens may themſelves agree to a rate for the repairs of the church, and the pariſh ſhall be bound by it. 1 *Mod.* 79, 194.

In order to prevent miſunderſtandings afterwards, it is pretty uſual, and very proper, to make an entry in the pariſh book of the matters propounded and agreed to at the veſtry, and to requeſt thoſe who aſſent thereto to ſubſcribe their names.

As to the adjournment of a veſtry, it muſt, like all other acts, be decided by a majority of the members preſent, for all perſons at a veſtry being equal, it reſides in no one perſon excluſively of the reſt. 2 *Stra.* 1042.

Hitherto we have been ſpeaking of *general* veſtries,

compounded of all or as many of the inhabitants as chooſe to attend; but a cuſtom has prevailed in large and populous cities and towns, (eſpecially in and about the metropolis) of chooſing yearly, a *ſelect* veſtry, that is, a certain number of the moſt reſpectable inhabitants, choſen to repreſent and manage all the concerns of the pariſh for that year; and this, though it has been ſometimes productive of injury to the pariſh, is held to be a good cuſtom, and is countenanced by the courts. 3 *Lutw.* 1027. CHURCH-WARDEN.

It has alſo been held to be a good cuſtom where pariſhes have choſen a certain number of pariſhioners as a ſelect veſtry, and as often as either of them drop off the ſurvivors filled up the vacancy; but the validity of ſuch a cuſtom muſt be founded on preſcription, and immemorial uſage, for a modern agreement of this kind would not be binding; and this mode of conſtituting ſelect veſtries was adopted by the directions of the legiſlature in 10 An. *c.* 11. for erecting 50 new churches in or near London and Weſtminſter; and in ſeveral private acts for building particular churches, a certain mode has been pointed out for the conſtitution of theſe aſſemblies, as 6 Geo. 1. *c.* 21. for St. Giles, Cripplegate, &c. 2 Geo. 2. *c.* 10. for Spital-fields; 2 Geo. 2. *c.* 30. for Wapping and Stepney; 3 Geo. 2. *c.* 17. for Limehouſe, and 3 Geo. 2. *c.* 33. for the pariſh of Horſlydown.

IV. *Of the Diſburſements of Churchwardens, and the paſſing their Accounts.*

By the 89th canon churchwardens are enjoined at the end of their year, or within a month thereafter, at the moſt, to give in to the miniſter and pariſhioners, at a veſtry to be held for that purpoſe, (a mode, however, which is frequently varied by the cuſtom of the pariſh) a juſt account of all monies they have received and expended for the uſe of the church, during the tenure of their office, and alſo, to deliver up to the ſaid pariſhioners the money and effects remaining in their hands. *Gibſ. Cod. c.* 15. 2 *Lut.* 1207. Churchwardens to account, &c.

They are likewiſe at the time of paſſing their accounts, to produce the goods of the church committed to their care, which it is proper ſhould be called over and examined before the pariſhioners; they are then to be delivered over to their ſucceſſors in office by bill, or inventory indented, together with the keys of the church, and pariſh

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cheſt, the pariſh regiſter book, and terrier of the glebe lands, all which are under the churchwarden's care. *Shaw.* 88. and if they are found to have waſted the goods of the church, they are accountable to their ſucceſſors, either by citation before the biſhop, or at common law. 1 *Wms. Juſt.* 493.

On their producing ſufficient vouchers for their diſburſements, their accounts are allowed, uſually by entering them in the pariſh account book, and procuring them to be there ſigned by the pariſhioners preſent. 1 *Wms. Juſt.* 490. and churchwardens being *bailiffs* of the pariſh and not mere *receivers*, they are allowed all reaſonable expences which they incur about the pariſh buſineſs. 10 *Mod.* 23.

If they have diſburſed in repairs, or by order of veſtry, more than they have received, their ſucceſſors in office are to pay them the balance due to them, and place it to the account of the pariſh. 1 *Roll. Abr.* 121. and of ſuch ſucceſſors they may recover it at law. *Prec. Chan.* 43. 2 *Vern.* 262.

Refuſing to account.

If the churchwardens refuſe to account, they may be either preſented, or have an action inſtituted againſt them at common law by the new churchwardens; and perſons admitted and ſworn into the office of churchwarden, may maintain ſuch action, even though not duly appointed, and though they may not be the immediate ſucceſſors of the defaulters. 2 *H. Black. Rep.* 559. or any of the pariſhioners intereſted may ſummon the churchwardens to account before the ordinary; but the Spiritual Court has no juriſdiction in *ſettling* the accounts of the churchwardens, all the ordinary can do therefore is to compel them to give in an account. 2 *Stra.* 974, 1133. 1 *Keb.* 574. 3 *Term Rep.* 3. If, however, any fraud appear in their accounts, the ordinary has power to puniſh them for breach of truſt. *Shaw* 86.

When they have faithfully accounted, and their accounts have been allowed by the miniſter and a majority of the pariſhioners preſent, they are *ipſo facto* diſcharged from their truſt, and they cannot afterwards be compelled to account again, unleſs in caſe of fraud being diſcovered therein. *Wood Inſt. c.* 7.

V. *As to the Duration of Churchwardens in their Office, and their Authority, &c. after it has expired.*

By 27 Hen. 8. *c.* 25. It is enacted that no churchwardens shall continue in office for a longer space than one year; and so by canon 89 it is ordained, that churchwardens shall continue only one year in their office, unless they be re-chosen for the next year.

It is, however, further ordained by canon 118, that they shall be reputed to continue in office until their successors be chosen and sworn.

In pursuance of the above statute, and canon 89, it has been held, that though it has been the immemorial custom in a parish for the churchwardens to continue in their office for *two* years, yet the parish may nevertheless remove them at the end of the first year, or at any other period, and choose new ones; for the parish might suffer greatly by their malpractices if they could not remove them at pleasure. 13 *Co.* 70.

For which reason they may be removed at any time for misbehaviour. *Lamb.* § 3.

And where it is the custom to choose but one new churchwarden yearly, as in some places it is, the junior churchwarden who remains in office, is not considered by the law as *continuing* in office, but as having been *re-elected* to the same duty. *Gibs.* 215.

As to the authority residing in churchwardens after the expiration of their office; where an assessment has been made, and their time expire before the whole be collected, they, by making presentment thereof, before or at the end of their year, are still empowered to proceed against those who have neglected to pay their quota. 1 *Bac. Abr.* 376. they must otherwise depend upon its being collected and paid over to them by their successors, which might be more dilatory and uncertain. See also ante p. 14. RATES.

CHAP. II.

OF OVERSEERS OF THE POOR.

THE poor of England, till the time of Hen. 8. subſiſted, according to Mr. Juſtice Blackſtone, as do the poor of Ireland at this day, upon private benevolence; for though by the common law "they were to be ſuſtained by the pariſh, ſo that none of them die for want of ſuſtenance," yet there ſeems to have been no *compulſory* method of providing for them; they were, therefore, left to ſuch relief only as the charity of well diſpoſed Chriſtians might afford them. When the monaſteries ſubſiſted, from whence their chief ſupport was derived, this defect was little noticed, but on the diſſolution of theſe, the inconvenience of ſuffering the poor to live in indolence and beggary, was publickly felt throughout the kingdom, and various ſtatutes were made during the reign of Hen. 8. and his immediate ſucceſſors, for providing a remedy for the evil. And the poor being of two ſorts, the ſick and impotent who were *unable*, and the idle and ſturdy who were *unwilling* to work, a proviſion was attempted to be made for both of theſe, by founding three royal hoſpitals for the relief of the *impotent*, and Bridewell for the puniſhment and employment of the *idle*; but theſe were by no means ſufficient for the care or proviſion of the poor of the whole kingdom, which led (after many other fruitleſs experiments) to the appointment of *overſeers* of the poor by the ſtat. of 43d of Eliz. *c.* 2.

As the duties of this officer are exceedingly multifarious we ſhall, that we may be ſufficiently explicit, without unneceſſary repetitions, conſider

I. Who may be appointed to, and who are exempt from ſerving the office of overſeer.

II. The manner and form of his appointment.

III. His various duties and authority.

1. In reſpect of the *relief* and *management* of the *poor in general.*

2. In reſpect of *baſtards.*

3. In reſpect of *apprentices.*

4. In respect of *rates* for the relief of the poor, and other purposes. OVERSEER

IV. Concerning the *accounts* of overseers.

V. The favour shewn them in the execution of their office.

VI. The penalties incurred by them for neglect of duty.

I. *Who are liable to be chosen Overseers of the Poor, and who are exempt from serving.*

The observation which we made when treating of the office of churchwarden, namely, that all persons of whichever sex, being inhabitants of the parish, unless under some peculiar exemption or disability, were liable to be elected, is equally applicable to that we are now considering, with this exception, only, that overseers must, by stat. 43 Eliz. *c.* 2. be *substantial housekeepers* in the parish, or district for which they are appointed; this injunction, however, it is apparent, cannot be observed where there are not a sufficient number of substantial housekeepers in the parish: in which case it has been determined that the appointment of a poor person will be good. 2. *Term Rep.* 395, 406. Who eligible.

But by the common law, grounded on reasons of policy and general convenience, certain persons are excused from the service of this or any other parochial office. Persons exempted.

Such are peers of the realm, members of parliament, clergymen, dissenting ministers, popish priests, barristers at law, physicians, surgeons, and apothecaries, attornies, and other officers of the courts at Westminster, aldermen of London, and other places, prosecutors of felons, servants of members of parliament, soldiers, militia men; of which see more particularly ante chap. I. sec. 1.

It has also been held that acting justices of the peace ought not to be appointed overseers, if there are other persons eligible. 1 *Burr.* 245.

Persons who shall think themselves aggrieved by an undue appointment, may appeal to the next general quarter sessions. 43 Eliz. *c.* 2. 17 Geo. 2. *c.* 38. 3 *Term Rep.* 38. Appeal.

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II. *As to the Mode of appointing Overseers of the Poor, and their Continuance in Office.*

Overseers to be appointed by justices of the peace.

It is enacted by 43 Eliz. *c.* 2. and 13 and 14 Car. 2. *c.* 12. that the churchwardens of every parish, and such four, three, or two *substantial housekeepers* there, as shall be thought meet, (having respect to the proportion and greatness of the parish) to be nominated *yearly* in *Easter* week, or within one month after, under the hand and seal of two or more justices of the peace, in the same county, and dwelling in or near the said parish or division, (one of whom shall be of the *quorum*) shall be called *overseers of the poor* of the same parish.

In all which cases of appointment by justices, &c. the appointment must be under their *hands and seals*, and they must sign and seal it *in each other's presence*. 1 *Stra.* 101. 3 *Term Rep.* 38. But though this last requisite be neglected, it should seem that the appointment is not *absolutely void*, but *voidable only* by appeal to the sessions. See 4 *Term Rep.* 596.

(Corporate towns.)

And by the said act 43 Eliz. the mayors, bailiffs, or other head officers of towns *corporate*, and *cities*, being justices of the peace, shall have the same authority within their jurisdiction as justices of the county within theirs.

And that every alderman of *London* shall have a like authority within his ward.

And by 17 Geo. 2. *c.* 38. if an overseer die, remove, or become insolvent, such justices or head officers may put another in his stead, who shall continue till new overseers are appointed.

Justices neglecting to appoint.

Further, by the said statutes, if the justices refuse or neglect to appoint overseers in due time, the court, on application from the parish, will grant a mandamus to compel them. And persons aggrieved as to such appointment, are to appeal to the next sessions.

Determinations on stat. 43 Eliz.

On the stat. 43 Eliz. it has been determined, that no more than *four*, nor less than *two* overseers can be appointed for any one township or parish; the statute shewing the intent of the legislature, by beginning with the word four, and ending with the other number, and the parish having as great a security from four as from more. 1 *Burr.* 445.

And though the statute directs the appointment to be made in, or within a month after *Easter week*, yet if it be

made at any *subsequent* period it will be good; for the statute being made for the relief of the poor, is liberally construed for their benefit. 2 *Stra.* 1123. But it has been much doubted whether an appointment made on a *Sunday*, though *within* Easter week be supportable, on account of the great impropriety of doing acts of business upon that day. See 1 *Black. Rep.* 649. *Coup.* 139. Overseer

The statute requires the appointment to be made by justices dwelling *in or near* the parish; but these words are *directory* only; if, therefore, there be no justices residing in or near the place, the overseers may be appointed by any other justices of the county. 1 *Bur.* 446. 12 *Mod.* 138, 546.

And so, too, though *parishes*, *townships*, and *villages*, are the only words used in the statute, yet places *extraparochial* are comprised within the *spirit* of the act; to which, therefore, the justices, on application by the inhabitants, are bound to appoint overseers, and that though there be no officers in such place to make the rates. *Fol.* 98. 1 *Stra.* 512. But such place to be within the statute, must have the *reputation* of a town, vill, or hamlet. *Bur. Set. Ca.* 35. 4 *Term Rep.* 550. Upon which ground it has been determined that the ancient inns of court, scites of cathedrals, colleges, abbeys, and places of the like nature, being extraparochial, and being neither vills nor hamlets either legally or by reputation, are not liable to have overseers appointed to them. *Cald. Cas.* 238. 3 *Bur.* 1391.

But where there are several vills, townships, or hamlets, in the same parish, (which is frequently the case) the justices cannot appoint separate overseers for each separate district, unless the parish will not otherwise receive the full benefit of the statute, in which case they may. 3 *Bur.* 1610. 1 *Doug.* 346. 1 *Term Rep.* 374. 4 *ibid.* 266. as they likewise may, where any particular township, &c. has for a great number of years past, in fact had separate overseers. 3 *Term Rep.* 746.

When appointed, the overseers are to continue till the ensuing Easter, and not longer, and the year mentioned in the order of appointment is construed to mean a year from Easter to Easter, and not a year from the time of appointment; and therefore though the appointment be delayed till after the time directed by the statute, yet his office will expire on the Easter following. 2 *Stra.* 1123. 1 *Bott, P. L.* 20. 4 *Term Rep.* 395. Continuance in office.

III. *The various Duties of Overſeers of the Poor; and their Authority in diſcharging them.*

We ſhall, for greater perſpicuity, diſtribute the ſubject of this head into the following ſubdiviſions, and enquire

1. Concerning the duty of overſeers in the general management and relief of the poor.
2. In reſpect of *baſtards*.
3. In reſpect of *pariſh apprentices*.
4. In reſpect of *rates* for the relief of the poor, and other purpoſes.

1. *Concerning the Management and Relief of the Poor in general.*

Poor to be employed by the pariſh.

By 43 Eliz. *c.* 2. and 13 and 14 Car. 2. *c.* 12. it is provided, that the churchwardens and overſeers of every pariſh, townſhip, and village, ſhall, from time to time, with the conſent of two juſtices (one of whom ſhall be of the *quorum*,) dwelling near the pariſh or diviſion, take order for ſetting to work all ſuch children whoſe parents are not able to maintain them, and alſo for employing all ſuch other perſons as have no ordinary and viſible trade, or other means of honeſtly providing for themſelves; and alſo ſhall raiſe weekly or otherwiſe, by taxation on the inhabitants, a convenient ſtock of hemp, wool, thread, iron, and other neceſſary ſtuff to ſet the poor to work, and alſo competent ſums of money for the relief of the lame, impotent, old, blind, and others, being poor, and unable to work, and alſo for putting out poor children to be apprentices.

And further, that the ſaid churchwardens and overſeers ſhall meet once, or oftener, in every month, at the pariſh church at the ending of divine ſervice, on the Sunday afternoon, to conſider of the relief of the poor as occaſion may require.

Except their near akin can maintain them.

But the ſame act of 43 Eliz. is afterwards qualified by proceeding to enact, that the father and grandfather, mother, and grandmother of the *children* (which word includes the *grandchildren*) of every poor, old, blind, lame, and impotent perſon, or other poor perſon, not able to work, if they be of ſufficient ability, ſhall at their own charge re-

lieve and maintain every ſuch poor perſon in ſuch manner as the juſtices at their quarter ſeſſions ſhall direct. This clauſe, however, extends to relations by blood only, and not (as erroneouſly ſtated by Mr. Juſtice *Blackſtone*, 1 *Com.* 448.) to thoſe by marriage; a ſon-in-law, it has therefore been held, is not bound to provide for his mother-in-law, 1 *Stra.* 190. 4 *Term Rep.* 118, nor a huſband for the children of his wife by a former marriage. 1 *Rol.* 324. nor a father for his ſon's wife, *Ibid.*

Where to be relieved,

Upon this ſtatute of Eliz. it has been determined that the churchwardens or overſeers are not bound to reſort to their poor out of their own pariſh in order to relieve them, even though they ſhould be too ill to be brought home, they being to be taken care of where they are till they be removable, and not relievable by their own pariſh till they are carried to it. 3 *Wms. Juſt.* 679.

When relief to be paid them,

And it is to be obſerved, that when any poor perſon is relieved under the ſtat. and money is ordered to be paid to him by weekly inſtalments, as it uſually is, ſuch money is to be paid at the *beginning* of each week, and not as wages are, at the end of the week. 1 *Term Rep.* 316.

Poor refuſing to be employed.

And in caſe any poor perſons refuſe to be employed as the overſeers and churchwardens direct, they may be committed by a juſtice to the common gaol till they comply.

Overſeers, &c. may hire or build workhouſes, &c. for the poor.

And the ſaid overſeers and churchwardens may, by leave of the lord of the manor, build on any waſte in the pariſh, cottages and dwelling houſes for ſuch poor; and by 3 Cha. 1. *c.* 1. they may with the conſent of two juſtices ſet up any trade for the purpoſe of employing the poor.

And alſo by 9 Geo. 1, *c.* 7. it is provided, that it ſhall be lawful for the churchwardens and overſeers, (or the majority of them, 3 *Term Rep.* 592.) with the conſent of the major part of the inhabitants, or pariſhioners, in veſtry, or other public meeting aſſembled for that purpoſe, or the major part of as many as ſhall ſo aſſemble, upon uſual notice given, to purchaſe or hire any houſe or houſes in the ſame pariſh, townſhip, or place, and alſo to contract with any perſon or perſons for the lodging, maintaining, or employing the poor; and there to keep, maintain, and employ them, and take the benefit of their work and ſervice for the uſe of the poor in general. And as a guard againſt idleneſs and diſſipation in ſuch houſes, it is enacted by 24 Geo. 2. *c.* 4. that no ſpirituous liquors ſhall be ſold or uſed in any workhouſe, or other houſe for the pariſh

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poor, and that every master of such poor house shall procure a copy of sec. 13, 14, and 15, of the said act, to be printed or written, and hung up in one of the most public places of the said house, and renew the same from time to time, so that the same may be always legible, on pain of 40*s.* to be levied by warrant of a justice, one half to the informer, and the other half to the poor of such house.

Parishes may unite for relief of the poor.

Also, where any parish, town, or township, shall be too small to purchase or hire such houses, &c. two or more such parishes may with the approbation of any justice dwelling in or near the parish, *unite* in hiring such houses for the purposes aforesaid.

Poor refusing to be lodged in workhouses.

And by the said act of 5 Geo. 1. it is also enacted, that if any person for whom relief is prayed, (see 3 *Term Rep.* 637) shall refuse to be lodged, &c. in such houses, or places, he shall not be entitled to receive any relief from the parish.

But this last clause of the act of 5 Geo. 1. being found in many cases to be a hardship upon the poor, it is now by 36 Geo. 3. *c.* 23. provided that the overseers, with the consent of the parishioners, or the approbation in writing of a justice, may, (notwithstanding such refusal to be lodged as aforesaid) give relief to industrious poor at their *own homes*, if such indulgence be rendered necessary by illness, or other cause.

Parents leaving their families, &c.

Further, in regard to the relief and management of the poor, it is provided by 5 Geo. 1. *c.* 8. that where any wife, or children shall be left by the father, or husband, or mother, without support, it shall be lawful for the churchwardens or overseers, by order of two justices, to seize so much of the goods, and receive so much of the rents and profits of the husband, father, or mother, as may be sufficient to enable the parish to provide for them; and the churchwardens and overseers shall be accountable to the quarter sessions for the money they shall so receive.

Also, by 17 Geo. 2. *c.* 5. persons threatening to leave their wives or children to the parish, and, by 32 Geo. 3. *c.* 45. persons refusing to get work, or not applying a due proportion of what they earn towards the maintenance of their wives or families, whereby they become chargeable to the parish, shall be deemed idle and disorderly persons, and be committed to the house of correction accordingly.

Poor relieved to be registered.

And by 3 Will. and Mar. *c.* 11. it is enacted, that the churchwardens and overseers shall cause to be kept a book, wherein shall be registered the names of all persons re-

ceiving contributions from the parish, with the day and year when they were first admitted to have relief, and also the occasion which reduced them to that necessity. And once in every year, in *Easter* week (or oftener if need be) the churchwardens and overseers shall meet the parishioners at vestry or otherwise, where such book shall be produced and inspected, and a fresh list, if they shall see occasion, be made of persons then requiring relief; and further, that no other person than those in such list contained shall be entitled to relief, without the warrant of a justice of the peace for that purpose; and when persons shall by such justice be ordered relief, their names shall then be entered in the said parish book as aforesaid. OVERSEER

And all persons receiving relief from the parish, and the wife and children of such persons, shall wear upon the shoulder of the right sleeve of the uppermost garment, a badge with a large P, and the first letter of the name of the parish, cut in red or blue cloth, as directed by the churchwardens and overseers, upon penalty of being whipped, &c. at the discretion of a justice; and if any churchwarden or overseer shall relieve any poor person refusing to wear such badge, he shall forfeit 20*s.* Persons relieved to wear a badge.

And by statute 9 Geo. 3. *c.* 37, it is enacted, that if any churchwarden or overseer, or other person anthorized by them to make payments to the poor, shall wilfully make any such payment in base or counterfeit money, or in any other than lawful and current money of Great Britain, he shall, on conviction before one justice, forfeit not more than 20*s.* nor less than 10*s.* Paying the poor in base money.

2. *As to the Duty of Overseers in respect of Bastards.*

In a treatise upon Parish Affairs it might, perhaps, have been expected that a considerable space would have been allotted to the subject of bastards, but as the authority of overseers of the poor, as well as of other parish officers in respect of illegitimate children, is entirely under the direction of a justice of the peace, we conceive that this would have been foreign to the design of a work professing to assist the parishioner in those matters only in which he can act of his own authority; for where he is obliged to have recourse to other authority than his own, it is fit that *that* authority, and that only, should be his guide. Observation.

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It may, however, be proper to notice ſome of the more eſſential points relative to a ſubject which, unfortunately, ſo frequently arreſts the attention of the pariſhioners.

Fathers of baſtard children may be apprehended.

By 6 Geo. 2. *c.* 31, it is enacted, that if any ſingle woman ſhall be delivered of a baſtard child, which ſhall be, or ſhall be likely to become chargeable to any pariſh, or extraparochial place, or ſhall declare herſelf with child, and that ſuch child is likely to be born a baſtard, and ſhall, upon oath before a juſtice, charge any perſon with having gotten her with child, ſuch juſtice on application made to him by the overſeers of the poor of ſuch pariſh, or one of them, or by any ſubſtantial houſekeeper of any extraparochial place, ſhall cauſe ſuch perſon to be apprehended, and commit him to the common goal, or houſe of correction, unleſs he ſhall give ſecurity to indemnify ſuch pariſh or place againſt any charge in reſpect of ſuch child, or to appear at the next general quarter ſeſſions and abide by the order which ſhall be there made.

But if ſuch woman ſhall die, be married before delivery, or miſcarry, or ſhall not have been with child, ſuch perſon ſhall be diſcharged; and upon applying to a juſtice, ſuch juſtice ſhall ſummon the overſeers or houſeholders aforeſaid, to ſhew cauſe why he ſhould not be diſcharged; and if no order be made within 6 weeks after ſuch woman ſhall have been delivered, &c. he ſhall be diſcharged accordingly.

And where a perſon has entered into a bond to indemniſy the pariſh, and yet neglects to provide for the child's maintenance, the pariſh officers may, without waiting for the order of a juſtice, adminiſter it neceſſary relief, and will be entitled to recover the money they have advanced in an action on the bond, 2 *Saund.* 89. 1 *H. Black. Rep.* 253.

Baſtards delivered in hoſpitals, &c.

And in reſpect of baſtard children delivered in *hoſpitals*, it is provided by 13 Geo. 3. *c.* 82, that if any woman ſhall be delivered of a baſtard child in any hoſpital, or place of public reception for pregnant women, the keeper, or other perſon having the management thereof, ſhall, 4 days before ſhe ſhall be diſcharged therefrom, give notice thereof to the churchwardens or overſeers of the pariſh where ſuch hoſpital, &c. ſhall be ſituated; and ſuch overſeer or churchwarden ſhall attend there at the time therein ſpecified, (and ſo from time to time, as often as may be neceſſary, if the woman ſhould then be unable to be removed,) and convey ſuch woman before ſome juſtice of the peace,

In order to be examined relative to her place of settlement, and such examination shall be delivered in writing to the overseer or churchwarden, and by him deposited amongst the parish books and papers.

And if such woman is to be removed to any other parish within 20 miles of the hospital, &c. such other parish shall be chargeable with the expences thereof, to be settled by a justice, and be paid within 2 days after demand, or be levied by distress under a justice's warrant.

And the parish officers shall have power to apprehend the reputed father of the child of such woman, as in other cases.

Where infant bastards relievable.

It may further be mentioned on the subject of bastards, that though bastard children are sent with their mothers for nurture from their own to their mother's parish, they are nevertheless to be relieved by the parish where legally settled. *Cald.* 6. *Bur. Set.* 4.

As to the place of a bastard's settlement, see title SETTLEMENT.

3. *The Authority of Overseers of the Poor in respect of Parish Apprentices.*

Overseers, &c. may bind poor children apprentice.

The legislature perceiving that there were many poor persons who had not the benefit of parental education, and judging very wisely and humanely that somebody should take care of them, directed that they should be under the management of the churchwardens and overseers of the poor, who are supposed to have the best opportunity of knowing the situation of the poor children of their parish, wherefore, by 43 Eliz. *c.* 2, it is provided, that it shall be lawful for the churchwardens and overseers of the poor, or the major part of them, with the assent of any two justices of the peace, (one of whom must be of the quorum) to bind out apprentice, where they shall see convenient, all such poor children of their parish whose parents are not able to provide for them; such children, if male, to be bound till the age of 21, and if female, till the age of 21 or marriage: and it is declared that the same shall be as binding and effectual to every purpose as if such children were of full age, and bound him or herself by indenture of covenant.

Upon which act, it has been held that the church-

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wardens and overſeers are not reſtrained to bind ſuch children to inhabitants of the pariſh, but are authorized to apprentice them to any other perſons wherever reſident, who are willing to take them. 2 *Term Rep.* 730.

And maſters compellable to take them.

And by 1 Jac. 1. *c.* 25. 21 *ibid*, *c.* 28. and 3 Car. 1. *c.* 4, it is enacted, that all perſons to whom the overſeers and churchwardens, or the major part of them, ſhall bind any children apprentice by virtue of the ſaid act of 43 Eliz. may keep the ſame as apprentices.

On which ſtatutes it has been held, that the inhabitants are not merely at *liberty* to take, but may be *compelled* to accept ſuch poor apprentices. 1 *Salk.* 67.

And though a perſon live out of the pariſh, yet if he occupy land within it, he may be compelled to take ſuch apprentice. 3 *Term Rep.* 107. And where two or more perſons hold land in copartnerſhip, ſome of whom occupy the ſame, and others not, it has been determined that the latter as well as the former, are bound to take apprentices, 7 *Term Rep.* 33.

And, by 8 and 9 Will. 3. maſters to whom they are ſo bound ſhall provide for them according to the indenture of apprenticeſhip, confirmed by the juſtices, and ſhall execute a counterpart thereof; and if they refuſe ſo to do, ſhall, on oath thereof, made by one of the churchwardens or overſeers, forfeit the ſum of 10*l.* to be applied to the uſe of the poor where ſuch offence was committed.

As to incorporated places.

And by 20 Geo. 3. *c.* 36, perſons to whom any poor children ſhall be bound apprentice in purſuance of any act made for relief of the poor in any particular hundreds or diſtricts, incorporated for the relief of the poor, ſhall receive and provide for them according to the indentures executed by the directors, or acting guardians of the poor of ſuch hundreds, or diſtricts, and execute a counterpart of ſuch indentures *in like manner* as perſons to whom poor children are appointed to be bound by churchwardens and overſeers; and in caſe of refuſal, ſuch perſons ſhall, upon proof thereof, by the oath of one of the ſaid directors or guardians, forfeit a like ſum of 10*l.* to the poor of the pariſh.

The ſaid act not to extend to any perſons, except thoſe who are inhabitants and occupiers of land in the pariſh to which ſuch child may belong.

But thoſe who occupy land, &c. in the pariſh, are deemed inhabitants under this clauſe, though they do not reſide within it. 3 *Term Rep.* 523.

And further, by 7 Jac. 1. *c.* 3, it is provided, that money given for the purpoſe of putting out poor children apprentice in corporate towns, ſhall be employed by the corporate body, and in other places by the parſon or vicar, together with the conſtables, churchwardens, and overſeers, who ſhall alſo in ſuch caſes have the placing ſuch apprentices out; the choice to be made from thoſe whoſe parents are leaſt able to provide for them, and who are of or within the age of 15 years.

Money given for putting out poor children.

And the maſter receiving a premium ſhall be bound in one or two ſureties in double the ſum, on condition to repay the ſame within 7 years or 3 months thereafter; and if the maſter or apprentice ſhall die within that time, then within 1 year after ſuch death; and the money given for the aforeſaid purpoſe ſhall be employed within 3 months after it come to hand, and if there be not at that time fit perſons to be put out in the places to which the money is given, it ſhall be applied in putting out children of any adjoining pariſh.

Moreover, the parties are directed to account yearly in Eaſter week, or within one month after, before two juſtices, for the money they may have received, and pay over to their ſucceſſors in office, the money remaining in their hands. And on breach of truſt, by miſapplying any of the ſaid money, the chancellor of Great Britain ſhall ſee right done therein.

Binding apprentices to the *ſea ſervice.*

By 2 and 3 Anne, *c.* 6, churchwardens and overſeers of the poor, with the approbation of two juſtices, or head officers of cities and towns corporate, may bind out any boys of the age of 10 years or upwards, who, or whoſe parents ſhall be chargeable to the pariſh, or beg for alms, to be apprentices to the ſea ſervice, to any of his majeſty's ſhips, or any owner or maſter of ſhips belonging to any port in England, Wales, or Berwick, until ſuch boys ſhall attain the age of 21 years; and the age of every ſuch boy, as taken from the regiſter of the baptiſm, (a copy of which ſhall be given, atteſted by the miniſter or curate without fee) ſhall be mentioned in his indentures.

And the churchwardens and overſeers ſhall pay with ſuch boy on his binding, the ſum of 50*s.* to the maſter, to provide clothing and bedding.

And the ſaid churchwardens and overſeers ſhall ſend the indentures to the collector of the cuſtoms reſiding at any port to which ſuch maſter or owner of any ſhip may

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belong, in order that he may enter the ſame, which he ſhall do without fee.

Binding to the trade of a chimney ſweeper.

Churchwardens and overſeers of the poor may alſo, by 28 Geo. 3. *c.* 48, with the conſent of two juſtices, (ſignified under their hands) or the conſent of their parents, bind any boy of the age of *eight* years who is chargeable to the pariſh, or whoſe parents are ſo, or who ſhall beg for alms, to be apprentice to any chimney ſweeper, until he attain the age of 16 years; and the indentures ſhall be as binding and as effectual to every purpoſe as if ſuch boy were of full age and had bound himſelf.

Apprentices may be aſſigned over.

And by 2 & 3 Anne, *c.* 6. and 32 Geo. 3. *c.* 57, perſons to whom ſuch poor apprentices ſhall be bound may, by the aſſent and direction of two juſtices, aſſign them over to other maſters for the reſidue which may be then to come of their reſpective terms.

As to what ſort of apprenticeſhip will gain a *ſettlement*, ſee *poſt*, title SETTLEMENT.

4. *As to the Duty and Authority of Overſeers in reſpect of Rates for the Relief of the Poor, and other Purpoſes.*

Concerning which we ſhall enquire

1. Into the right of the churchwardens to make a rate, and alſo the manner in which it is to be made.

2. The perſons and property liable to be rated.

3. The authority of the overſeers in levyng rates.

AND FIRST, as to the right of overſeers to make a rate.

1. *Right of making rates.*

By 43 Eliz. *c.* 2. the churchwardens and *overſeers of the poor* of every pariſh, or the greater part of them, ſhall, with the conſent of two juſtices of the peace, (one of whom ſhall be of the *quorum*) dwelling in or near the pariſh or diviſion, raiſe *weekly* or *otherwiſe*, by taxing, in ſuch ſums of money as they ſhall think fit, every inhabitant, parſon, vicar, and other, and every occupier of lands, houſes, tythes impropriate, propriations of tythes, coal mines, or ſaleable underwoods in the pariſh, a ſufficient ſtock of flax, hemp, wool, yarn, and other neceſſary ware and ſtuff, to ſet the poor to work; and alſo money for the relief of the lame, impotent, old, blind, and other, being poor, and not able to work; and alſo for putting out poor children apprentice, and generally to do all other

things concerning the premiſes, as to them ſhall ſeem meet.

And it has alſo been determined that overſeers may make a rate to defray the expences of a law-ſuit neceſſarily incurred for the pariſh benefit. 1 *Bott. P. L.* 78. 239.

And further, by 33 Geo. 3. *c.* 8. and 34. *ibid, c.* 47, if any perſon choſen to ſerve in the militia, or any ſerjeant, corporal, drummer, or fifer, ſerving therein, ſhall, when embodied and drawn out into actual ſervice, leave a family unable to ſupport themſelves, ſuch family ſhall be paid out of the poor's rates ſuch weekly ſums as a juſtice ſhall think fit to order.

And by 17 Geo. 2. *c.* 38, overſeers of the poor within every townſhip or place where there are no churchwardens, ſhall execute all the acts and powers concerning the relief of the poor and other matters relating to them, the ſame as churchwardens and overſeers, *jointly*, may do by that or former ſtatutes.

Upon the above ſtatute of Eliz. various deciſions have taken place relative to its due conſtruction; as though the ſtatute authorizes the overſeers to make rates *weekly*, or *otherwiſe*, yet it ſeems that no rate ought to be made for a longer time than 3 months, becauſe as the poſſeſſors of the lands, &c. for which the rate is payable, frequently change, a longer rate might often be attended with inconvenience and injuſtice. 6 *Mod.* 10. 8 *ibid*, 10, 2 *Blac. Rep.* 694.

Determinations on the ſtat. of Eliz.

And again, though the overſeers are empowered to act in all things concerning the premiſes as they ſhall think meet, yet this liberty is to be confined ſtrictly to the *relief of the poor*, they cannot therefore make a rate for the ſeemingly reaſonable purpoſe of reimburſing their predeceſſors what they expended whilſt in office; for a pariſh being a fluctuating body, if this were permitted the expences incurred by one ſet of inhabitants might be defrayed by a ſubſequent ſet. And beſides, overſeers are not bound to lay out money before they have received it; ſhould they therefore incautiouſly do ſo, they muſt themſelves make a new rate for the *relief of the poor*, and out of it reimburſe themſelves. *Salk.* 357. 1 *Bott*, 75. *n.* 6.

And for the reaſon above given, overſeers cannot borrow money for the purpoſes of the poor, as, if they could, new inhabitants might be called upon to pay money

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borrowed before they became pariſhioners, and from which they have received no benefit. *Doug.* 110.

But if the overſeers, while in office, have themſelves made a rate for any of the purpoſes aforeſaid, and their year expire before they have collected ſufficient of it to repay themſelves the money they may have expended, their ſucceſſors are empowered to get in the ſame, and reimburſe their predeceſſors; the ſtatute 17 Geo. 2. *c.* 38 enacting, that in caſe any perſon ſhall neglect to pay to the overſeers for the time being, any ſum they ſhall be legally rated to, the ſucceeding overſeers ſhall levy ſuch arrears, and reimburſe their predeceſſors all ſums expended for the uſe of the poor, and allowed to be due to them in their accounts.

And as the overſeers accounts (as we ſhall ſee hereafter) are to be ſettled at the end of every year, if they be appointed for ſeveral ſucceſſive years, and do not make a rate at the end of each year to reimburſe themſelves what they have expended in ſuch year, they cannot in any ſubſequent year make a rate for that purpoſe: for if this were permitted, the preſent inhabitants would be burthened with the expences of their predeceſſors. 6 *Term Rep.* 159.

Conſent of inhabitants not neceſſary to make a rate.

And it has been determined that the conſent of the inhabitants is by no means neceſſary to the making of a rate, the churchwardens and overſeers with the aſſent of two juſtices, having complete authority to raiſe any ſum they ſhall think fit. Parties aggrieved are to appeal to the next *ſeſſions.* 2 *Ld. Raym.* 1013. 2 *Salk.* 531.

Neglecting to make a rate.

And if they refuſe to make a rate where neceſſary, or the juſtices refuſe to ſign a rate (concerning the propriety of which they have no right to enquire), they may reſpectively be compelled by *mandamus.* *Faley*, 19.

Rate to be publiſhed.

And, by 17 Geo. 2. *c.* 3, it is provided, that the churchwardens and overſeers, and other perſons authorized to take care of the poor, ſhall give public notice in the chapel, or church of the pariſh, or place, of every rate for the relief of the poor, which ſhall have been allowed by the juſtices, on the *next Sunday* after the ſame ſhall have been ſo allowed. And no rate ſhall be collected till ſuch notice thereof be given; the want of which requiſite is a radical defect, and will render the rate a nullity, even though not appealed againſt. 4 *Term Rep.* 368.

Rates to be copied in a pariſh book.

And by the aforeſaid ſtatute of 17 Geo. 2. *c.* 38, it is enacted, that the churchwardens and overſeers of the poor ſhall cauſe copies of all rates made for the relief of the

poor to be entered in a book to be by them provided, and ſhall atteſt the ſame by putting their hands thereto; and ſuch books ſhall be preſerved, that all perſons aſſeſſed, or liable to be aſſeſſed, may reſort thereto, and the ſame ſhall be delivered over from time to time to the ſucceeding churchwardens and overſeers, as ſoon as they enter into their offices. Churchwardens and overſeers omitting in the above particulars, ſhall forfeit not more than 5*l.* nor leſs than 20*s.* to the uſe of the poor. OVERSEER

And the churchwardens and overſeers ſhall permit every inhabitant to inſpect ſuch rates at all reaſonable times, on payment of 1*s.* and ſhall alſo, if demanded, give copies thereof on payment of 6*d.* for every twenty-four names. And if any churchwarden or overſeer ſhall refuſe to let any inhabitant inſpect ſuch rates, or neglect or refuſe to give copies thereof as aforeſaid, he ſhall forfeit the ſum of 20*l.* to the party aggrieved, to be recovered by action of debt.

Proportion and manner of rating.

The rate muſt be made on all the rateable inhabitants in equal proportions, according to their reſpective properties and poſſeſſions; which the churchwardens and overſeers are to do according to their diſcretion and judgment, for no *ſtanding* rate can be made, on account of the conſtant improvement in the value of land, and the fluctuation of perſonal property. *Cald. Ca.* 105. And the rate is to be made according to the improved *value* of the eſtate, and not according to the rent which the occupier may pay for it. 6 *Term Rep.* 154.

And that perſons may not be doubly rated under particular circumſtances, it is provided by the ſaid act of 17 Geo. 2. *c.* 38, that where any perſon ſhall come into or occupy any houſe, land, or hereditament, out of which any perſon aſſeſſed ſhall have removed, or which at the time of making a rate was empty, every perſon ſo removing from, and every perſon ſo coming into or occupying the ſame, ſhall be liable to pay ſuch rate only in proportion to the time he or ſhe occupied the ſame, in like manner as if the perſon ſo removing had not removed, or the perſon coming in had been originally rated, which proportion is to be aſcertained in caſe of diſpute by any two juſtices of the peace, and if they make it unequal, it muſt be corrected by appeal to the *ſeſſions*, which is the ultimate reſort in caſes of the inequality and proportion of rates, 2 *Stra.* 1259. unleſs the inequality appear upon the face of the rate itſelf, or be diſcloſed by the juſtice, in

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which case the court of king's bench will interfere and quash the rate. 6 *Term Rep.* 154.

Further, by the aforesaid statute of 43 Eliz. if it appear to any two justices of the peace that any parish is unable to levy within itself sufficient money for the purposes of that act, they are empowered to rate such sum as may be necessary upon any *other parish*, or place, (whether parochial or not, *Foley* 25, 28.) within the *hundred*, as the justices at their quarter sessions may, upon any parish, &c. within the *county*; and in making this rate they may tax particular persons only, or assess one gross sum upon the whole parish at their discretion, and leave it to the churchwardens and overseers to levy the same. 2 *Stra.* 1114.

As to incorporated places.

And in regard to rates for relief of the poor of incorporated districts, it is enacted by 36 Geo. 3. *c.* 10, that it shall be lawful for the directors and acting guardians of the poor within any district incorporated for the relief of the poor, whenever the average price of wheat in *Mark Lane*, London, for the quarter preceding their general meeting, shall exceed the average price of those years from which the average amount of the poor's rates was taken, upon passing the several incorporating acts, to assess such district in such sum as they may deem necessary for the poor of the current quarter, and for paying the interest of money borrowed, and debts incurred since 1st January 1795, notwithstanding the sum so assessed shall exceed the assessment limited by the act of incorporation: provided that the sums to be assessed, after 1 January 1795, shall not exceed in any one year double the amount of the sums at the time of passing this act, raised by the said incorporating act.

2. *Persons and property liable to be rated.*

SECONDLY. As to the persons and property liable to be rated for relief of the poor, &c.

Persons rateable.

All persons, inhabitants of a parish, and not themselves coming under the denomination of *the poor*, are liable to be rated for the relief of the indigent, in proportion to their visible property in the parish. 2 *Bulst.* 354. *Salk.* 485.

Thus, a person appointed to the care of a charitable institution in the parish was held to be rateable in respect of a house assigned for his habitation, for that being part of the emoluments of the appointment, he was considered as a beneficial occupier. 6 *Term Rep.* 333. But it is otherwise where a person resides in a house belonging to a charitable institution, merely as a servant, employed for the purposes of the charity. 5 *ibid.* 587.

And though a perſon *dwell* in a different county, yet if he occupy lands in the pariſh, he is, in reſpect of the poor's rates, deemed an inhabitant, and therefore rateable; for if it were otherwiſe, great inconveniences would enſue, as a perſon may dwell in one pariſh, whilſt the whole of his property is in another. 5 *Co.* 66.

And a perſon is rateable for the whole of the houſe in which he dwells, though he uſe or inhabit but a part of it, for it would be exceedingly inconvenient to be obliged in each particular caſe to inquire what rooms of a houſe the owner occupied, before he could be rated. 4 *Term Rep.* 477. But where a houſe is divided into ſeveral *diſtinct* tenements, and inhabited by different families, or where two *ſeveral houſes* have but one entrance, they may be rated ſeparately. 2 *Salk.* 531.

And in aſſeſſing rates it is the *occupier* only of the premiſes who is to be aſſeſſed, and not the leſſor or landlord, who receives the rent, (unleſs in the caſe of *lead mines*, which ſee), for the poor's rates are *perſonal* dues, not chargeable upon the land, nor payable out of it, but are a charge in *reſpect* only of the land, to which the *perſonal* eſtate is liable. 2 *Bulſtr.* 354. 8 *Mod.* 314. *Fitz.* 298.

And no perſons whatſoever are, in reſpect of their landed property, ſo privileged as to be exempt from this contribution. *Cald.* 152.

Property rateable.

As to the ſpecies of property liable to be rated. Theſe, for the greater eaſe of referring to them we ſhall arrange in alphabetical order.

Almſhouſes.

ALMSHOUSES. Houſes built and applied for the ſole purpoſes of a charity are not liable to poor's rates. *Cald.* 153. Nor are lands given for ſuch purpoſe. 3 *Term Rep.* 602. For per *Mansfield*, Ch. J. the general rule of law, in reſpect to rates is, that there muſt be an occupier to be rated. The poor cannot be rated at all; the ſervants cannot be rated as occupiers, nor can the corporation be rated as an occupier. 4 *Bur.* 2435.

But where a perſon receives any profit or emolument, of whatever nature the inſtitution may be, from which he is benefited, he is ſaid to be liable in proportion to the benefit he receives. 2 *Bur.* 1059. 3 *Term Rep.* 602. 6 *ibid* 333, and See HOSPITALS.

Chambers.

CHAMBERS. Chambers in the inns of court and chancery, it is ſaid, are exempted from poor's rates; not, however, (as it ſhould ſeem) on account of their being inns of court, but becauſe the ſcites of all the ancient

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inns of court are extraparochial. If, therefore, they are ſo enlarged that the foundation of any part ſtands upon parochial ground (as has been the caſe in Lincoln's-Inn) the inhabitants of chambers ſituated upon ſuch ground will be rateable under the ſtatute 43 Eliz. *c.* 2. See *Com. Rep.* 534 and 537, note (2)

CHAPELS. CONVENTICLES. } See MEETING-HOUSE.

Coal-mines.

COAL MINES. Coal mines are expreſsly rateable to the poor by ſtat. 43 Eliz. and therefore, though they ſhould yield no profit to the worker, yet they are ſtill liable. 5 *Term Rep.* 593.

Corporations.

CORPORATIONS ſeiſed in fee of lands for their own profit, are occupiers within the meaning of 43 Eliz. *c.* 2, and are therefore ſubject to the poor's rates in reſpect of ſuch lands. And ſo it is likewiſe of a *company* not incorporated. 1 *Term Rep.* 219. *Cowp.* 79. See alſo TOLL, ALMSHOUSES, HOSPITAL.

Docks.

DOCK. Lands converted into a dock under an act of parliament, are rateable for the relief of the poor, the act not altering the nature of the property in reſpect of rates. But where an act exempts lands generally from all *public taxes*, they are exempted from poor's rates. 3 *Term Rep.* 219, 480.

ENGINE. See MACHINE.

FAIRS. See TOLL. MARKETS.

Furniture.

FURNITURE. It has been determined that houſhold furniture is not rateable to the poor, for ſo far from producing any thing, it is an expence to the owner, and it was obſerved by the court, that a man might as well be rated for the food he eats, or the clothes he wears. 4 *Term Rep.* 771.

HERIOTS. See QUIT RENTS.

Hoſpitals.

HOSPITALS. The lands belonging to an hoſpital are ſaid to be ſubject to the poor's rates, for a man cannot by any particular appropriation exempt his lands from duties to which they are naturally liable, and ſo throw an additional burthen upon his neighbours. 2 *Salk.* 256.

This, however, it appears, muſt be underſtood of lands occupied by perſons as tenants thereof, and not of lands held by the hoſpital itſelf for its immediate ſupport; for it is an invariable rule, that there muſt be ſome one in the beneficial occupation of the land to which the rate attaches, and neither the governors nor the poor of an hoſpital

can be conſidered as beneficial occupiers. 2 *Bur.* 1053. 4 *ibid*, 2435. 3 *Term Rep.* 497. Overseer

But though hoſpitals, &c. and lands held for their immediate ſupport are not rateable, yet officers of ſuch eſtabliſhment, holding part of the hoſpital lands, or apartments therein, for their own convenience, become rateable in reſpect of, and in proportion to, the beneficial intereſt they derive from them; upon which principle of beneficial intereſt, the comptroller of *Chelſea College*, who reſided in the comptroller's apartments, was held to be rateable as the occupier. 2 *Bur.* 1059.

Lead-Mines. The occupiers or leſſees of lead-mines paying no other rent than a portion of the ore, are not liable to poor's rates, for the ſtat. 43 Eliz. mentioning only *coal*-mines, is equal to an exemption of all other mines, and they are things caſual and uncertain, and may prove unſucceſsful to the adventurer. 3 *Bur.* 1341. Lead mines.

But if they be let out at a ſtipulated proportion of the actual profits, without any riſk of the leſſor, he is liable to be rated in reſpect of ſuch profit; for per *Ld. Mansfield*, though lead-mines are not within the ſtatute as being uncertain, and perhaps detrimental to the adventurer, yet the leſſor or perſon who, in caſe they do prove of value, receives a ſtipulated benefit, is not excuſable on the ſame ground; he is liable to the poor's rates for his viſible real property in the pariſh: it is not a mere caſual profit, but an annual revenue paid by the miner for the profits he receives. What reaſon, therefore, is there that the owner of the land ſhould be exempted? it makes no difference to the adventurer; but as theſe obligatory payments or contributions are in reſpect of the land, he ought not to receive it clearer or neater than any other part of his eſtate, eſpecially when he is at no trouble, expence, or poſſible riſk. *Comp.* 451. *Cald.* 155.

Lighthouse. See Toll.

Machines. The profits of a weighing machine, like all other profits, have been held liable to be rateable to the poor. *Cald.* 262. And ſo likewiſe of a carding machine. *Ibid*, and 1 *Term Rep.* 721. But it ſeems that things of this nature muſt, in order to be liable, be affixed to ſome houſe or other premiſes, ſo as to be conſidered as appurtenant thereto, in which caſe they are both ſubject to one entire rate. Machines.

Markets and Fairs. It has been adjudged that the leſſee of a ſtall in a market, which he frequents and uſes Markets, &c.

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on the market days, is not liable to the payment of poor's rates, he not being conſidered as an occupier within the pariſh. 2 *Roll. Rep.* 238.

But a perſon ſeems to be chargeable in reſpect of the toll-profits, which he receives from a fair. 4 *Bur.* 2491. 2 *Term Rep.* 90. See Toll.

Meeting houſes.

Meeting Houses. Conventicles, chapels, or meeting-houſes, uſed for the purpoſe of preaching, and not of profit, are not liable to the poor's rates, neither the preacher nor audience being *occupiers*, unleſs either of them let out the pews ſo as to reap a profit therefrom; but if a *profit* be made of the houſe, though it be uſed only for religious purpoſes, it is rateable. 2 *Stra.* 745. 1 *Bott. P. L.* 97. 5 *Term Rep.* 79. *Cald.* 310.

Mines. See Coal-Mines. Lead-Mines.

Mineral waters.

Mineral Waters. The profits ariſing from a mineral ſpring, when let together with land at one groſs rent, are to be conſidered as part of the produce of the land, and are therefore rateable to the poor. *Cowp.* 619. But in this caſe it ſeems to have been the opinion of the court, that had the ſpring been let independent of the land, and at a *ſeparate* rent, it would not have been rateable.

Money.

Money. Money in a man's houſe or poſſeſſion is not rateable to the poor; for, per *Buller*, Juſt. it does not produce any profit; the rule of rating is to confine it to viſible property, yielding profit in the pariſh: if this rule be adhered to, there will be no difficulty, but it would be dangerous in the extreme to extend it farther, and to look into every man's bureau to ſee what money he has there. 4 *Term Rep.* 791, and ſo as to money on mortgage.

Mortgage.

Mortgages. Money lent on mortgage, or otherwiſe, out of the pariſh, cannot be rated to the poor, for per *Kenyon*, Ch. J. the rate is to be made in reſpect of *viſible* property, locally ſituated within the pariſh; this, therefore, cannot be rateable. 4 *Term Rep.* 791.

Palace.

Palace. A biſhop's palace is rateable. 3 *Keb.* 572. As to palaces belonging to the crown, ſee "Royal Poſſessions."

Parks. See Royal Possessions.

Perſonal property.

Personal Property. No expreſs deciſion appears ever to have been made as to the general queſtion, whether perſonal property of whatever deſcription, or in whatever ſituation, is liable to be aſſeſſed to the rates of the poor. The courts have always avoided the deciſion of a queſtion of ſuch great and unforeſeen importance, and have con-

fined themſelves to the particular circumſtances of each caſe which has come before them; theſe the reader may ſee under the words FURNITURE, MONEY, MORTGAGE, SALARIES, SHIPS, STOCK, &c. It has been declared, however, that perſonal property, in order to be liable, muſt be viſible, liquidated, and aſcertained; not caſual, fluctuating, and uncertain. And upon this ground it has been lately reſolved that an attorney is not liable to be rated in reſpect of the profits of his profeſſion. 7 *Term Rep.* 60. 1 *Bott. P. L.* 112. 4 *Bur.* 2291. 6 *Term Rep.* 55. See many obſervations of the courts of law relative to the liability of perſonal property in general. 1 *Bott P. L.* 112, 114. *Cowp.* 550, 565, 618. 4 *Bur.* 2291. 5 *ibid* 77. 6 *ibid* 53. OVERSEER

PRISONS. Upon the ground of every thing being rateable to the poor which yields an annual and certain profit, priſons are rateable in reſpect of the profit made of them by the keeper; as in letting out private apartments to the priſoners in the King's Bench, Fleet, &c. 1 *Bott. P. L.* 160. Priſons.

PUBLIC POSSESSIONS. The poſſeſſions of the public are not rateable to the poor; therefore ſtables rented for the uſe of regiments, have been held to be exempted, as being in the uſe of the public. 2 *Term Rep.* 372. 4 *ibid* 6. Public poſſeſſions.

QUIT-RENTS. Quit-rents, heriots, or other caſual profits of a manor, are not liable to be rated to the poor; for, per *Eyre*, J. there are no occupiers. *Comb.* 264. 2 *Burr.* 991. Rents.

Ground rents, however, are ſaid to be rateable. *Comb.* 62.

RIVERS. See TOLLS.

ROYAL POSSESSIONS. The poſſeſſions of the crown in its own occupation are not rateable to the poor, therefore it has been determined that royal palaces in the occupation of the royal family are exempted. *Cald.* 1. Royal poſſeſſions.

But occupiers and renters of the crown lands, or poſſeſſions, are not exempted; for, when the reaſon of exempting the crown demeſnes fails, they no longer retain this privilege. *Cald.* 153. 3 *Term Rep.* 497; the ranger of a royal park is therefore rateable to the poor for incloſed lands yielding certain profits. 1 *Term Rep.* 338. 2 *Hen Blac. Rep.* 265.

SALARIES. Perſons are not liable to be rated in reſpect of ſalaries they may receive, whether of a public or private nature; that ſpecies of property not being Salaries.

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mentioned in the ſtatute of Eliz. nor having any analogy to thoſe which are. 4 *Bur.* 2011. 1 *Bott. P. L.* 109. 4 *Term Rep.* 771,

Ships.

SHIPS. It has been determined, that ſhips, or veſſels employed in merchandize, are rateable for the place from which they trade; thus a perſon was rated in reſpect of veſſels employed in the Newfoundland trade, from the town of Poole; for per *Kenyon*, Ch. J. the rate is to be upon perſons in reſpect of all viſible property within the pariſh. I think, therefore, that the ſhips are rateable; this pariſh is their home, and muſt be ſo conſidered on account of their regiſter. 4 *Term Rep.* 771.

SLUICES. See TOLLS.

STALLS. See MARKETS.

Stock in trade.

STOCK IN TRADE. Stock in trade is rateable to the poor where it produces a profit, and its value can be aſcertained, but not otherwiſe. It becoming a queſtion whether a farmer was rateable in reſpect of *his* ſtock as a tradeſman is, Ch. J. *Holt* thought that he was, and *Powis* and *Gould* that he was not. See 2 *Ld. Raym.* 1280. Alſo 16 *Vin. Abr.* 426. 4 *Term Rep.* 771. 6 *ibid* 55, 468. And See alſo PERSONAL PROPERTY.

Toll.

TOLL. Toll of tin, as alſo fee farm of tin, are rateable to the poor as being a ſtipulated proportion of caſual profits ſimilar to the caſe of lead mines noticed in a former page, (ſee LEAD,) 3 *Term Rep.* 480.

The tolls of a corporation are alſo chargeable. 3 *Keb.* 540. *Freem.* 419.

And ſo too of the tolls of fairs. 4 *Bur.* 2491. A like determination took place in reſpect of the tolls of ſluices on a navigable river; and they are rateable for thoſe pariſhes where the toll becomes due. *Cowp.* 581. 2 *Term Rep.* 660. See alſo 4 *ibid*, 21 and 543.

And the like of a lighthouſe, *Cowp.* 583, which things are rateable for the pariſh where they are ſituated. But in the caſe of a lighthouſe, it ſeems that, to be rateable, the veſſels for which toll is taken muſt come within ſome pariſh.

But where the toll is in the hands of commiſſioners as truſtees for public purpoſes, it is not rateable, becauſe no one is in the beneficial receipt of it. 4 *Term Rep.* 730.

Tythes.

TYTHES. Tythes are rateable to the poor, for they are a tenement, and within the ſtatute. *Com.* 265. 1 *Stra.* 77, 100, and it makes no difference whether the parſon hold them in his own hands, or lets them to the pariſh-

ioners, for ſuch letting amounts to no more than an agreement that the pariſhioners ſhall retain the tythes. 16 *Vin. Abr.* 427. OVERSEER

If, however, the parſon grants a leaſe of his tythes to another, the leſſee becomes the occupier, and is therefore the perſon chargeable. 8 *Mod.* 61. 1 *Stra.* 524.

So likewiſe are the tythes of fiſh rateable to the poor where they are tytheable. 3 *Term Rep.* 385.

WATER. See MINERAL WATERS.

WASTE LANDS. By 17 Geo. 2. *c.* 37, lands formerly waſte and barren, but ſince improved or drained, ſhall be rated to the poor, and ſubject to all other parochial rates within the pariſh, or place which lies neareſt thereto. Waſtes.

WAY-LEAVE, or a liberty of paſſing over another's grounds is not rateable, though a ſtated yearly rent be paid for it, 2 *Term Rep.* 90, as ſuch perſon cannot be ſaid to be an occupier of any thing, but has only a bare licence or agreement: and the land is already rated. If, however, the occupier of the land were to let out a way through it at a profit, he would be rateable in reſpect of ſuch profit. *Ibid.* Way-leave.

THIRDLY, as to the method of levying the poor's rates. 3. Authority in levying rates.

By 43 Eliz. *c.* 2, & 17 Geo. 3. *c.* 38, it is provided, that overſeers and churchwardens, or any of them, may (and are bound ſo to do, or may be indicted, *Nol. Rep.* 28.) by warrant from two juſtices, one of whom ſhall be of the *quorum*, levy by diſtreſs and ſale of goods, all ſums and arrearages of poor's rates aſſeſſed on perſons refuſing or neglecting to pay the ſame; and ſuch diſtreſs may lawfully be had, not only in the place for which the aſſeſſment may have been made, but in any other place in the ſame county, or precinct; and in caſe ſufficient diſtreſs cannot be had in the ſame county or precinct, (oath thereof being made before a juſtice of any other county where the offender has goods,) the ſame may be levied in ſuch other county or precinct. Perſons aggrieved may appeal to the next quarter ſeſſions. Diſtreſs by juſtices warrant.

But it has been determined, that before the rate can be levied by diſtreſs, the party muſt be ſummoned before the juſtice granting the warrant. 6 *Term Rep.* 198. 7 *ibid.* 270.

And in caſe no diſtreſs can be had, the party may (by two juſtices) be commited to the common goal until the ſaid rates be paid.

And it is further provided by the laſt mentioned ſtatute, that ſubſequent overſeers may levy the arrears of defaulters, and thereout allow their predeceſſors any ſums they may have expended for the uſe of the poor.

Diſtreſs not void for irregularity.

Alſo, that in caſe any diſtreſs ſhall be made for any rate juſtly due, the diſtreſs ſhall not be unlawful, nor the party a treſpaſſer, on account of any defect in the warrant appointing the overſeers, or authorizing the diſtreſs, or in the rate: nor ſhall the party diſtraining be deemed a treſpaſſer from the beginning, on account of any irregularity by him afterwards committed in making ſuch diſtreſs, but the perſon aggrieved ſhall recover ſatisfaction only for the particular damage he may have ſuſtained by ſuch irregularity.

And an overſeer diſtraining for poors rates under a juſtice's warrant, being an officer within the protection of 24 Geo. 3. *c.* 44, cannot be proceeded againſt for any irregularity, till the party injured has required to peruſe the warrant, and has been refuſed. *Bul. Ni. Pri.* 24. 7 *Term Rep.* 270.

Nor ſhall any action for ſuch ſatisfaction be maintained, if tender of amends has been previouſly offered for the injury done.

Juſtices compellable to grant warrant.

And if any juſtice refuſe to grant a warrant of diſtreſs for rates in purſuance of the aforeſaid acts, he may be compelled thereto by mandamus from the court of King's Bench. 1 *Wilſ.* 125. 1 *Bott. Poor L.* 207, unleſs ſuch rate were neglected to be duly proclaimed as before directed, in which caſe the juſtice is not bound to grant ſuch warrant. 4 *Term Rep.* 368.

IV. *Concerning the* Accounts *of Overſeers of the Poor.*

Overſeers are to account to their ſucceſſors.

It is enacted by 17 Geo. 2. *c.* 38, that the churchwardens and overſeers of every pariſh, townſhip, and village, ſhall, within 14 days after overſeers ſhall be appointed for the year enſuing, deliver unto ſuch ſucceeding overſeers a juſt account in writing, fairly entered in a book to be kept for that purpoſe, and ſigned by them, of all ſums by them received, or rated on the inhabitants, (though the ſum be not received) and alſo of all goods, chattels, ſtock and materials, in their hands, or in the poſſeſſion of any poor of the ſaid pariſh to be wrought or worked; and of

all monies by them the ſaid churchwardens and overſeers paid during their office; and finally, of all other matters and things relative to their ſaid office, proper to be tranſmitted to their ſucceſſors. OVERSEER

And ſuch churchwardens and overſeers ſhall pay and deliver over to their ſaid ſucceſſors in office, all monies, goods, and other things in their hands, which account ſhall be verified by oath (or *affirmation* if the ſaid officers be *quakers*) before a juſtice of the peace. And deliver over to them balances, &c.

And amongſt the things to be delivered over by outgoing overſeers to their ſucceſſors are the books of the poor's rate, as being public books of account which the pariſhioners have a right at all times to inſpect. 1 *Wms. Juſt.* 305.

And a book of ſuch accounts ſhall be preſerved by all churchwardens and overſeers, in ſome public or other place in every pariſh, townſhip, or village; and they ſhall permit any perſon aſſeſſed, or liable to be aſſeſſed to the poor, to inſpect the ſame at all ſeaſonable times upon the payment of 6d. for every ſuch inſpection; and the ſaid churchwardens and overſeers ſhall, on demand of any perſon ſo rated, or liable to be rated, forthwith give copies of ſuch accounts, at the rate of 6d. for every 300 words thereof, and ſo in proportion for any greater or leſs number of words. Their accounts to be preſerved for inſpection.

And if any overſeer ſhall refuſe or neglect to give up ſuch accounts on oath, as aforeſaid, or ſhall refuſe or neglect to give up and pay over to his ſucceſſors all monies and other things of the pariſh, in his hands, as before directed, he ſhall be committed to the common gaol till he comply, or may be indicted and fined. 5 *Mod.* 179. and ſee *poſt.* p. 53. Penalty on refuſing to account.

Alſo, if any overſeer ſhall remove from the pariſh, he ſhall, before ſuch removal, deliver over to ſome other overſeer, or to the churchwarden, ſuch his accounts verified as aforeſaid, together with all monies, rates, books, papers, and other things belonging to the pariſh, under the like penalty of impriſonment. Overſeers removing.

And in caſe of the death of any overſeer during his office, his executors or adminiſtrators ſhall, within 40 days after his deceaſe, pay over unto ſome other overſeer of the pariſh, or the churchwarden, out of the aſſets of the deceaſed, all monies received by him by virtue of his office, and not therein diſburſed, before any other Overſeers death.

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debts be paid; and ſhall alſo deliver over, in like manner, all other things belonging to the pariſh which ſhall come to their poſſeſſion as executors or adminiſtrators aforeſaid.

Becoming bankrupt.

And though an overſeer ſhould become a bankrupt, the money he has collected for the uſe of the poor will not be affected, he holding ſuch money in the capacity of a *truſtee* for the pariſh: nor, per *Buller*, Juſt. will the bankruptcy diſcharge him from his office of overſeer. 1 *Term Rep.* 369.

Appeal if aggrieved.

Perſons unjuſtly charged by the accounts of the overſeers, may (on giving reaſonable notice to ſuch overſeers) appeal to the next quarter ſeſſions.

Juſtices may enforce payment of balance.

And, after ſuch appeal has been determined, any two juſtices may, if the ſaid appeal be adjudged *againſt* the overſeers, enforce the payment of the balance due to the pariſh; and if ſuch juſtice refuſe or neglect to enforce payment, he may be compelled ſo to do by mandamus from the court of King's Bench. 4 *Term Rep.* 246.

Overſeers are not entitled to an aſſiſtant.

And it is not in the diſcretion or power of the veſtry to diſpenſe with the payment of ſuch balance, not even though they may wiſh him to retain it for the purpoſe of paying a bill they may have engaged to anſwer. 2 *Stra.* 992. for the ſtatute is expreſs, that the balance ſhall be paid over, nor can an overſeer retain any part of the money in his hand to pay an aſſiſtant in the diſcharge of his duty, even though ſuch aſſiſtant was appointed, and his ſalary fixed, *with the expreſs conſent* of the pariſh; for this office is to be performed without fee or reward for the benefit of the poor; and if two overſeers are not enough, more may be appointed. 1 *Bott. P. L.* 278.

V. *The Favour ſhewn to Overſeers in the Diſcharge of their official Duties.*

Overſeers may plead the *general iſſue*, or *ſpecial* matter.

In protection of the lawful authority of overſeers under the ſaid ſtatute of 43 Eliz. it is provided, that if any action of treſpaſs be brought againſt them for any act of their duty, they may plead the *general iſſue*, or make avowry, cognizance, or juſtification; and if the matter be determined in favour of the defendants, they ſhall recover

And ſhall recover *treble damages* with *coſts*.

treble damages, with *coſts* of ſuit; which damages are to be aſſeſſed by the *jury*, and the *court* are to *treble* ſuch damages and give coſts. 1 *Valu.* 176.

And by 7 Jac. 1. *c.* 5, it is enacted, that in any action brought againſt overſeers or churchwardens, or others executing their orders, every ſuch perſon may plead the *general iſſue*, and give the ſpecial matter in evidence; and if the verdict be in his favour, the judge before whom the matter ſhall be tried, ſhall allow unto the defendant *double coſts*. But in order to entitle himſelf to double coſts, the defendant muſt, *at the time of the trial*, obtain a certificate of the judge, that the action was brought againſt him for ſomething done in execution of this act. *Bul. Ni. Pri.* 332. 1 *Doug.* 307.

No action ſhall be brought againſt an overſeer till notice, &c.

And further, by 24 Geo. 2. *c.* 44, it is enacted, that no action ſhall be brought againſt any conſtable, or *other officer*, or perſon acting in his aid, for any thing done in obedience to any warrant of a juſtice of the peace, until demand of the peruſal and copy of ſuch warrant has been made or left at the uſual place of his abode, by the party or his attorney, and the ſame has been refuſed or neglected for the ſpace of 6 days after ſuch demand; and, that if after ſuch demand any action ſhall be brought againſt him, *without* making the juſtice who granted the warrant a defendant with him, the jury ſhall, on ſuch warrant being produced and proved at the trial, find a verdict for the defendant, notwithſtanding any defect of juriſdiction or authority in ſuch juſtice to grant the ſame: *and*, if ſuch action be brought *jointly* againſt ſuch juſtice, and ſuch officer, or perſon acting in his aid, then on proof of ſuch warrant, the jury ſhall find for ſuch officer or his aſſiſtant, notwithſtanding ſuch defect of juriſdiction as aforeſaid; and if the verdict ſhall be given againſt the juſtice, the plaintiff ſhall recover his coſts againſt ſuch juſtice, to be ſo taxed as to include all coſts which the plaintiff is liable at law to pay to him for whom the verdict ſhall be found.

And laſtly, no action ſhall be maintained againſt any officer or perſon acting under his directions, unleſs it be commenced within 9 calendar months after the cauſe of action ſhall ariſe.

Overſeers, the reader perceives, are not *expreſly* named in this ſtatute, but per *Ld. Mansfield*, Ch. J. (*Loft Rep.* 249.) overſeers of the poor and churchwardens are clearly within the meaning and protection of this ſtatute, the legiſlature by paſſing this act meant to *extend* the benefit of the ſtatute, 21 Jac. 1. and therefore *all officers* acting under

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a juſtice's warrant, are included in it. This obſervation is, however, to be underſtood as applying to ſuch officers when acting in their *civil* capacity only, and not when acting in execution of their eccleſiaſtical duty as in the preſentment of offences by churchwardens, and the like. *Cro. Car.* 285.

VI. *The Penalties incurred by Overſeers for Neglect of Duty, or other Miſbehaviour.*

Refuſing the office.

By the common law, if a perſon appointed overſeer of the poor refuſe or neglect to take upon him that office, he may be indicted for contempt of the laws, and fined, or otherwiſe puniſhed by the juſtices. 2 *Seſſ. Ca.* 187. 2 *Stra.* 1146. This, however, is not till he has had perſonal notice of his appointment. 1. *Bott.* 297.

Neglect of duty.

And by ſtatute 43 Eliz. *c.* 2, it is enacted, that every churchwarden or overſeer of the poor who ſhall be negligent in the execution of his office, ſhall forfeit for every default the ſum of 20*s.* to be expended for the uſe of the poor of the pariſh, and to be levied by the churchwardens and overſeers, or one of them; (viz. if negligence be ſhewn by a churchwarden, the penalty is to be levied by the overſeer, and if by the *overſeer*, the penalty is to be levied by the churchwarden. *Vin. Abr.* 415.) the ſame to be levied by diſtreſs, under warrant of any two juſtices, (one of the *quorum*) or of the head officer of corporate places; and if no diſtreſs can be had, the offender ſhall be committed to priſon till the forfeiture be paid.

And by 17 Geo. 2. *c.* 38, it is provided, that if any churchwarden or overſeer of the poor ſhall neglect to obey the directions of that act, (which ſee ante p. 38) or ſhall act contrary thereto, in any caſe where no penalty is expreſly provided, he ſhall, for every ſuch offence, forfeit a ſum not exceeding 5*l.* nor leſs than 20*s.* at the diſcretion of the juſtice, to be levied by diſtreſs and ſale as aforeſaid. But information of offences under this act muſt be made within 2 months after the ſame be committed.

And further, by 33 Geo. 3. *c.* 55, juſtices at the petty ſeſſions are empowered to impoſe upon churchwardens, overſeers, &c. for neglect of duty or diſobedience to warrants, any reaſonable fine not exceeding 40*s.*

And, beſides the *penalties* inflicted by theſe ſtatutes, it

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has been determined that overſeers refuſing to account within the time limited, for monies received by them for the uſe of the poor, they may be *indicted* for a contempt of the laws, and fined and impriſoned. 5 *Mod.* 179.

Indictable for refuſing to account, and other defaults.

And if they charge the pariſh with monies which they never expended, they may be indicted for ſuch fraud. *Comb.* 287.

So, alſo, if they be negligent in providing for the poor, or relieve them without ſufficient occaſion. 16 *Vin. Abr.* 415.

As they likewiſe may for other defaults and miſbehaviour; as where an overſeer forcibly removed from the pariſh a woman who was approaching to her labour, in order to prevent the child's being born there. 1 *Bott. P. L.* 296; and in caſes where overſeers procured a man to be married to a woman big with child by another, in order to diſburden their own pariſhes, and throw the expence on that to which the huſband belonged. 1 *Bott. P. L.* 300. *Bur.* 2106. *Cald.* 246. And in the caſe laſt referred to, the court ſaid that great inconvenience had ariſen from this practice of granting *informations* in theſe caſes, and that the propereſt mode of proceeding was by indictment. *Cald.* 246.

CHAP. III.

OF CONSTABLES.

CONSTABLES are of two ſorts, *high* conſtables, and *petty* conſtables. The office of high conſtable not being confined to any particular town, or pariſh, but extending generally to the whole hundred for which he is appointed, does not come within the ſcope of the preſent treatiſe, which is expreſly confined to thoſe matters only which relate to the concerns of a *pariſh*: the petty conſtable, therefore, whoſe juriſdiction extends to the particular pariſh, borough, or liberty only for which he is choſen, is the only *peace* officer with whom we are at preſent concerned; and in diſcourſing of that officer we ſhall conſider

I. The general nature of his office.

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II. Who are liable to be choſen to, and who are exempted from ſerving the office of conſtable.

III. The manner of chooſing and of ſwearing him into office, and the penalties of refuſing to be ſworn.

IV. The various duties of the office of conſtable, and his authority in diſcharging them.

V. The favour ſhewn him in the execution of his duty.

VI. Of the reimburſement of his expences.

VII. Of the manner of removing him from his office.

Under theſe heads we ſhall endeavour to compriſe all the material parts of his office in every matter which is likely to occur in the *ordinary* diſcharge of his duty. To mention every poſſible caſe in which, by one or other of the numerous acts contained in our ſtatute book, he may be authoriſed to interfere, would be morally impoſſible. In all caſes of doubt it becomes him to ſolicit the ſanction of a warrant from a juſtice.

I. *The general Nature of the Office of Conſtable.*

General duty of a conſtable.

The proper buſineſs of a conſtable is to prevent offences againſt the laws of the realm, to detect and apprehend offenders, and generally to preſerve the peace and good government of the diſtrict over which he may be appointed to preſide; and for this purpoſe he is armed as well by the common law as by the legiſlature, with very large and ſerious powers, even to the extent, in many caſes, of arreſting and impriſoning his fellow ſubjects, and of forcibly entering their dwellings; powers which it highly becomes him to exerciſe with due moderation and humanity.

One of their principal duties (ariſing from the ſtatute of *Wincheſter* which appoints them) is to keep *watch* and *ward* in their reſpective juriſdictons: *ward*, (*cuſtodia*, or guard) is chiefly applied to the day time, and intends the apprehenſion of rioters, and robbers on the highways; the manner of doing which is left to the diſcretion of the juſtice of peace, and of the conſtable. *Watch* is properly applicable to the night only, and it begins when ward ends, and ends when that begins, that is to ſay, (by the above ſtatute) from ſun ſetting to ſun-riſing.

The conſtable may at his diſcretion (regulated however by the cuſtom of the place) appoint watchmen to keep the peace and apprehend rogues, vagabonds, &c. by night; who being his deputies, have for the time being the ſame authority as the conſtable himſelf.

May appoint watchmen.

The conſtable is alſo the proper officer of the juſtice of the peace, and bound to execute his warrants, and therefore, where a juſtice is authorized by the legiſlature to convict a man of any offence, and to levy the penalty by warrant of diſtreſs, without its being ſaid by whom ſuch warrant ſhall be executed, the conſtable is the proper officer to ſerve the warrant, and may be indicted for diſobedience. 1 *Salk*, 175. 2 *ibid*, 381. 5 *Mod.* 130, 446. 2 *Hawk. Pl. C. c.* 10. § 35. But ſee 1 *Black. Rep.* 15. (notes.)

Execute juſtices warrants.

He is alſo to attend on coroners in order to execute their warrants, 2 *Hale P. C.* 59. and likewiſe on the judges of aſſize at the gaol delivery, and juſtices at the general and ſpecial ſeſſions, for the like purpoſe. *Crown Cir. Comp.* 34.

Attend coroners, aſſizes, &c.

But as the office of conſtable is by no means judicial, but wholly *miniſterial*, he may execute ſuch warrants, &c. directed to him, by *deputy*, if on account of indiſpoſition, abſence, or other ſpecial cauſe, he cannot conveniently do it in perſon. 2 *Bur.* 1259. 1 *Term Rep.* 682. For as the public good requires that there ſhould be always ſome officer ready to execute ſuch warrants, it might ſometimes occaſion a failure of juſtice if the ſervice of them were too rigorouſly reſtrained to the conſtable himſelf; in theſe caſes, however, like all others, the principal is anſwerable for the miſcarriage of his deputy.

May execute warrants by deputy.

And by 1 Will. and Mar. ſtat. 1. *c.* 18, it is enacted, that if any *diſſenter* from the church of England ſhall be choſen to bear the office of conſtable, and ſhall ſcruple in conſcience to take upon him the office, on account of the oaths to be taken, or other matter required by law to be done in reſpect of ſuch office, it ſhall be lawful for him to provide a ſufficient deputy to bear the ſame.

As may alſo *women* when choſen to this office.

The city of London is divided into 26 wards, every ward into a number of precincts, and every precinct has a conſtable, who is choſen yearly by the inhabitants of the precinct.

The general duty of conſtables appointed by this city, (as ſpecified in their oath) is to keep the king's peace to

Duty of conſtables in the city of London.

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the utmoſt of their power; to arreſt affrayers, rioters, and breakers of the peace, whom they are to carry to the houſe of correction, or the compter of one of the ſheriffs; and in caſe of reſiſtance, or eſcape, to make outcry upon them, and purſue them from ſtreet to ſtreet, and ward to ward, till they are taken; to ſearch for common nuiſances in their reſpective wards, on being requeſted by ſcavengers; to aſſiſt the beadle and raker in collecting their ſalary and quarterage; to preſent to the lord mayor and miniſters of the city all defaults relating to the city ordinances; to certify, monthly, into the court of the mayor, the Chriſtian and ſur-names of all freemen deceaſed, and alſo of the children (being orphans) of ſuch freemen, together with (*by the articles of the wardmote inqueſt*) the Chriſtian and ſur-names, place of abode, profeſſion, or trade, of all perſons who ſhall newly have become inhabitants within their reſpective precincts, and keep a roll thereof, for which purpoſe they are to make inquiries at leaſt once a month, as to what perſons are come to lodge or ſojourn there; and if they find that there are any new comers who were ſent from any other ward for bad living, or any miſdemeanor, they ſhall require them to give ſureties for their good behaviour, which if they refuſe, warning is to be given to them and their landlords that they depart, on refuſal whereof they may be impriſoned, and moreover the landlord fined a year's rent of the houſe or apartments they inhabited. See *Carthrope's Rep.* 129, 138, and *Carth. Cuſt. Lond.*

They are alſo by 10 Geo. 2. *c.* 22, to certify to the lord mayor and common council the names of all ſuch perſons as ſhall interrupt them in the diſcharge of their duty.

And they are to place the king's arms and thoſe of the city over their doors, or if they reſide in a court, at the end of ſuch court, that it may be known where a conſtable is to be found, if wanted.

II. *Who are liable to be choſen to the Office of Conſtable, and who are exempt from ſerving.*

Who liable to ſerve.

Generally ſpeaking, every houſekeeper, inhabitant of the pariſh, and of full age, is liable to fill the office of conſtable; he ought, however, to be of the abler ſort of pariſhioners, as being more likely to execute his duty with probity and diſcretion. 8 *Co.* 42. And if an impro-

per perſon be choſen, he may, upon application by the inhabitants, be removed by two juſtices and another appointed by ſuch juſtices in his room. CONSTABLE.

But for certain reaſons affecting particular deſcriptions of perſons, there are many exceptions to the general rule we have juſt mentioned, as Perſons exempted.

By 12 Will. 3. *c.* 2, and 1 Geo. 1. *c.* 4, it is provided, that no perſon born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereof (except he be born of Engliſh parents) ſhall be capable of ſerving *any office* of truſt, *civil* or military, not even though he be naturalized or denizened; on which ſtatute it has been determined that he is ineligible to the office of conſtable, it being a *civil office of truſt.* 5 *Bur.* 2790. Foreigners.

It has alſo been adjudged, that an alderman of the city of London is not compellable to ſerve the office of conſtable, for he is bound as alderman to be always preſent in the city to provide for its good government; and though, as we have before ſeen, he may appoint a deputy, yet he muſt be reſponſible for his deputy. *Cro. Car.* 585. Aldermen.

So likewiſe are attorneys at law, and all other officers of the court at Weſtminſter, exempted from this as well as other pariſh offices, for being bound to give their perſonal attendance in the courts, they are privileged from diſcharging all ſuch inferior offices which they cannot perſonally execute. *Doug.* 538. *Cro. Car.* 389. And ſuch officers are entitled to this privilege, as well in caſes where they are choſen by a particular cuſtom in reſpect of their eſtates, or otherwiſe, as where there exiſts no cuſtom concerning the election of conſtables, for no cuſtom ſhall be intended to be more ancient than thoſe of the courts of law, to which all others muſt give way. *Cro. Car.* 389. 2 *Keb.* 508. Attornies.

And on ſimilar principles it was admitted in 2 *Keb.* 578, 1 *Mod.* 13, that practiſing barriſters at law, and alſo the ſervants of members of parliament, have the ſame privilege of exemption, though there does not appear to be any expreſs reſolutions to that purpoſe. Barriſters. Servants of members of parliament.

And by 32 Hen. 8. *c.* 4, the preſident of the commonalty and fellowſhip of the ſcience and faculty of phyſic in *London*, and the commons and fellows thereof, are exempted from being elected to the office of conſtable *within the ſaid city of London*, and the ſuburbs of the ſame. And though this ſtatute does not extend to phyſicians practiſing in *other places*, yet it is imagined, that if a practiſing phyſician Phyſicians.

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were choſen conſtable of a town which has ſufficient perſons beſides to execute the office, he would find relief by application to the court of King's Bench. See 1 *Keb.* 439. 2 *ibid*, 578.

Surgeons.

Alſo it is provided by 5 Hen. 8. *c.* 6, that the wardens and fellowſhip of ſurgeons infranchiſed in the city of *London*, and all barber ſurgeons, not exceeding the number of twelve, duly admitted and approved, ſhall be diſcharged of the office of conſtable; and by 18 Geo. 2. *c.* 15, all freemen of the corporation of ſurgeons, as long as they ſhall exerciſe the art or ſcience of ſurgery, ſhall be exempted from ſerving the ſaid office. They are alſo by the ſame act diſcharged of all other pariſh offices, and from ſerving on juries.

And it is held that by the equity of theſe ſtatutes, and the general cuſtom of the realm, *all* ſurgeons are allowed the ſame privilege. *Com.* 312.

Apothecaries.

So, likewiſe, by 6 and 7 Will. 3. *c.* 4, freemen of the company of apothecaries in *London*, and within 7 miles of the ſame, and alſo all perſons uſing the art of an apothecary *elſewhere*, who have duly ſerved an apprenticeſhip therein, according to the ſtat. of 5 Eliz. ſhall be exempted from filling the office of conſtable, for ſo long as they ſhall exerciſe the ſaid art.

College officers.

The ancient officers of any of the colleges in the two univerſities are alſo exempted from this office; wherefore it was adjudged that a college barber of Oxford, though not reſiding within the walls of the college, was ineligible to the office of conſtable. *Doug.* 531.

Miniſters of the goſpel.

And by 1 Will. & Mar. *c.* 18, teachers or preachers in holy orders, and teachers, preachers, and miniſters of any congregation, who ſhall take the oaths, make and ſubſcribe the declaration, and ſubſcribe ſuch of the articles of the church of England as the act requires, ſhall be exempt from being choſen to any parochial office.

Militia men.

Alſo, by 26 Geo. 3. *c.* 107, it is enacted, that no ſerjeant, corporal, or drummer of any militia, nor any private, from the time of his enrolment, till his diſcharge, ſhall be compellable to ſerve as a peace or other pariſh officer.

Public officers.

Perſons holding public offices which require their daily perſonal attendance, are alſo exempted. But otherwiſe if their duty be of a miniſterial kind only, which may be performed by deputy. *Eſp. Ca.* 359.

Proſecutors of felons.

And further, by 10 and 11 Will. 3. *c.* 23, all perſons

apprehending any one who ſhall have been guilty of *burglary*, or of *privately* ſtealing goods to the value of 5*s.* from any ſhop, warehouſe, coach-houſe, or ſtable, or of commanding, aſſiſting, or hiring any one to commit ſuch offence, and proſecuting ſuch offender to conviction, ſhall (as well as their firſt aſſignee, under the certificate to be obtained by virtue of the ſaid act) be diſcharged from all pariſh offices within the pariſh in which the ſaid offence was committed.

Aged people in Weſtminſter.

Laſtly, by 31 Geo. 2. *c.* 17, it is provided, that no perſon within the city or liberty of Weſtminſter, who is of the age of 63 years or upwards, ſhall be compelled to ſerve the office of conſtable, or to procure any other to ſerve in his room.

Publicans.

It was alſo ſaid by *Holt*, Ch. J. 6 *Mod.* 41, that no perſon who keeps a public houſe ought to be a conſtable.

Perſons exempted by the crown.

Beſides the particular and *defined* exemptions we have already enumerated, there is a diſcretionary power in the king to exempt any perſon from ſerving this or any other office under the crown; but by *Aſhhurſt*, J. theſe grants of exemptions ought to be conſtrued ſtrictly, and unleſs made in the moſt explicit terms, they ought not to be allowed, and not even then, unleſs there is a ſufficient number of perſons left to ſerve the office. 1 *Term Rep.* 679. See alſo *Doug.* 179. *Cro. Car.* 260.

And on theſe grounds it was held that a younger brother of the Trinity Houſe was not exempt from the office of conſtable by virtue of the charters of that fraternity. 1 *Term Rep.* 679.

III. *Of the Mode of chooſing a Conſtable, the Form of Swearing him into his Office, and the Penalty of refuſing to be ſworn.*

How conſtable formerly choſen and how at preſent.

Anciently both high and petty conſtables, where there was a feudal lord, were admitted and ſworn by ſuch lord, or his ſteward, in the *leet;* but where there was no feudal lord, it was done by the ſheriff in his *tourn.* 1 *Bac. Abr.* 439. But the high conſtable is now uſually choſen at the ſeſſions by a majority of the juſtices of the diviſion; and petty conſtables may now of common right be choſen by the homage or jury in the court leet, or if there be no leet, by the ſheriff in his tourn. 2 *Salk.* 502. 1 *Ld. Raym.* 70. And it being ſettled that his election is in the

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people, it is cuſtomary in many pariſhes for the petty conſtables to be choſen by the inhabitants at a veſtry, and ſworn in before a juſtice of the peace.

But as a conſtable is a principal officer of the peace, the juſtices of the peace have, ever ſince the inſtitution of their office, taken upon them as conſervators of the peace, to nominate and ſwear in conſtables, when they have been neglected to be appointed by the *leet*. It has alſo been held that they may appoint conſtables, even in privileged places, and where there has been none for 50 years before; as in the *Tower Hamlets* they choſe five where there had formerly been but one, and it was determined that the appointment was lawful; for juſtices may chooſe them in *all caſes of neceſſity*. See 1 *Bac. Abr.* 439. *Haw. P. C. b.* 2. *c.* 10. § 49. 6 *Term Rep.* 228.

And not only where the leet has neglected to chooſe a conſtable, but where unable or unfit perſons have been choſen, the juſtices of the peace have interfered and removed them. *Dalt. c.* 28.

And ſo if a conſtable die, or remove out of the pariſh, and the time of holding the leet be at a diſtance, his place may be filled by the ſeſſions, or if they be not near, by the neighbouring juſtices of the peace, *ibid*, § 50, and this laſt power is recognized and confirmed by 13 and 14 Car. 2. *c*, 12.

It has alſo been adjudged, that a perſon duly choſen at the leet may be ſworn in by the ſeſſions of the peace, though he be rejected by the ſteward of the leet. 2 *Jones*, 212.

(City of London) In the city of London there are *day* and *night* conſtables, thoſe by *day* are choſen by the inhabitants of each precinct, yearly on St. Thomas's day, and afterwards confirmed or rejected by the court of wardmote; and the number of *night* conſtables is ordered by the court of common council yearly on the firſt day of October.

How ſworn. If the conſtable be preſent at the time of his election, he ought to be ſworn immediately, but if the court be firſt adjourned, the ſteward is to iſſue a precept commanding him to take the oath before one of his majeſty's juſtices of the peace. 1 *Ld. Raym.* 70.

(City of London) Conſtables of the city of London after being choſen by their reſpective precincts, are confirmed at the court of wardmote, and ſworn in at a court of aldermen on the next day after *twelfth-day*.

There is no particular form of an oath preſcribed to be

taken by a conſtable, but that uſually adminiſtered is to this effect:

Conſtable's oath.

You ſhall well and truly ſerve our ſovereign lord the king, and the lord of this leet, (if appointed in the court leet) *in the office of a conſtable, in and for the pariſh of* St. Clement Danes, *in the county of Middleſex*, (or the hundred or townſhip of B. as the caſe may be) *for the year enſuing, according to the beſt of your ſkill and knowledge.*

N. B. Petty conſtables are not obliged (like the high conſtable) to take the oaths of allegiance and ſupremacy under 1 Geo. 1. ſt. 2. *c.* 13.

Penalty for refuſing to be ſworn.

If the conſtable be preſent in court at the time of being elected, and refuſe to be ſworn, he is liable to be fined; but if he be abſent, he muſt (as has been before ſaid) have a certain time and place appointed him for the purpoſe of taking the oath before a juſtice, and have expreſs notice of ſuch appointment, in which caſe, if he neglect to attend, he may be heavily amerced at the next leet; or he may be indicted either at the ſeſſions of the peace, or before the juſtices of *Oyer and Terminer*, who will inflict ſuch puniſhment as they ſhall deem juſt. *Cro. Car.* 567. *Ld. Raym.* 69, 138.

IV. *The particular Duties of the Office of Conſtable, and the Authority given him by the Law in diſcharging them.*

In deſcribing the nature of the office of conſtable (p. 54), we were neceſſarily led into a ſhort ſtatement of the general outlines of his duty; we ſhall now enter more minutely into the particular powers and authorities with which he is entruſted, and the various objects to which, as conſervator of the peace, he is enjoined to direct his attention; and in order to do this with as much perſpicuity as poſſible, we ſhall arrange in alphabetical order the ſeveral objects of his juriſdiction, and ſtate under each head the duties of his office reſpecting it: firſt, then, of

Affrays.

AFFRAYS. A conſtable is not only authoriſed (like all other perſons) to ſuppreſs any affray or diſturbance which may happen in his preſence, but he is bound at his peril, as conſervator of the peace, to uſe his utmoſt endeavours to that purpoſe, and that not by himſelf alone, but he is

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impowered and bound to demand ſuch aſſiſtance from others as he may ſtand in need of, which they are compellable to afford him, under pain of fine and impriſonment. 3 *Inſt.* 158. *Dalt. c.* 8.

And if he ſee perſons engaged in an affray, or on the point of entering in one, as, where one ſhall threaten to kill, wound, or beat another, he may either carry the offender before a juſtice of the peace, or may impriſon him of his own authority, for a reaſonable time, till his heat ſhall be over, and afterwards detain him till he find ſureties to keep the peace. *Cro. Eliz.* 375. 2 *Haw. P. C.* 23. But he cannot impriſon ſuch an offender in any other manner, or for any other purpoſe; nor ought he to meddle with perſons uſing hot words only to one another, without any bodily hurt, otherwiſe than by commanding them under pain of impriſonment, to avoid fighting. 2 *Haw. P. C.* 23.

And though he himſelf be a ſufferer in the conteſt, and therefore likely to be partial in his own cauſe, yet he is ſo far entruſted with a diſcretionary power over actual affrays, that he is nevertheleſs juſtified in uſing his authority to ſuppreſs them; and therefore if an aſſault be made upon himſelf, he may impriſon the offender in like manner as if he were in no way a party. 1 *Roll. Rep.* 238. 2 *Bulſt.* 329.

And if the affray be in an houſe, the conſtable may break open the doors to preſerve the peace; as he may, alſo, to apprehend thoſe who have been guilty of an affray, and fled to an houſe to ſhelter themſelves from his purſuit. 2 *Haw. P. C.* 23. 3 *ibid*, 184. But he cannot apprehend any one for an affray committed out of his own preſence, without a warrant from a juſtice, unleſs in caſe of a felony being either actually committed, or likely to be. *Cro. Eliz.* 375. *Ow.* 105, *Eſp. Ca.* 540.

Or, if they fly into *another county*, the conſtable may in *freſh purſuit* follow and apprehend them there, but he can interfere no further, otherwiſe than as any private perſon, viz. take them before a juſtice of the peace of the county where they are apprehended; but though they fly into a *franchiſe*, if in the *ſame county*, he may continue his purſuit of them, and take them out of ſuch franchiſe as of any other place. 1 *Will. Juſt.* 33.

Apprentices.

APPRENTICES. In towns not corporate, money given to put out poor children apprentice ſhall be employed by the parſon or vicar, together with the *conſtables*, church-

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wardens, and overſeers, who ſhall have the nomination and placing out ſuch apprentices; and if they wilfully refuſe or forbear to employ the ſame, they ſhall forfeit 3*l.* 6*s.* 8*d.* each, to be divided between the poor and the proſecutor. See ante p. 33.

Arrests.

ARRESTS. We have ſeen the power of a conſtable as to arreſts in the caſe of affrays and broils, but his authority is not confined to thoſe ſpecies of miſdemeanors only; for by the original and inherent power placed in him by virtue of his office, he may for any breach of the peace, and alſo for felonies, and ſome miſdemeanors leſs than felonies, arreſt and impriſon the offenders, as

Arreſts in matters leſs than felony.

If a perſon leave an infant in the cold with an intent to deſtroy it, or with a view of charging the pariſh with its maintenance, the conſtable may arreſt the offender and place him in the ſtocks, *Cro. Eliz.* 287, or he may otherwiſe impriſon him till he engage to take care of it. *Moor*, 284.

Alſo, if a conſtable have information that perſons are in adultery or fornication together, or that a man is gone with a woman of evil report, to a ſuſpected houſe in the night-time, the conſtable may ſearch, and on finding them there, may take them before a juſtice of the peace, that they may be bound for their future good behaviour. *Dalt. c.* 124. 1 *Wilſ. Juſ.* 194.

He may likewiſe apprehend perſons riding armed contrary to the ſtat. 2 Ed. 3. *c.* 3, which enacts, that no man (ſave the king's ſervants, in his preſence, and his miniſters in the execution of their office, and their aſſiſtants) ſhall go or ride armed in fairs, or markets; nor in the preſence of the juſtices, or other miniſters; nor *elſewhere*, upon pain of forfeiting their ſaid arms to the king, and impriſonment during the king's pleaſure.

On which ſtatute it has been held,

1. That any *warden, or keeper of the peace* may proceed thereon, either *ex officio*, or by writ out of chancery; and if he find any one in arms contrary to the form of the ſtatute, may ſeize the arms, and commit the offender to priſon. 3 *Inſt.* 161. 2 *Bulſ.* 330. If he proceed *ex officio*, he muſt certify his proceedings into the court of *Exchequer*; if by writ out of chancery, he muſt certify into that court. 2 *Bulſ.* 330.

2. That he may not only impriſon thoſe whom *he* may find offending, but alſo thoſe who ſhall be found on an

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inquest taken before him, to have offended in his absence. *Cro. Eliz.* 294. 2 *Haw. P. C.* 21.

But, *note*, it has also been adjudged, that no wearing of arms is within the intent of this stat. unless accompanied with such circumstances as are calculated to alarm the people: therefore, persons of quality wearing swords at court, and the like, are not within the statute, as not causing any apprehension of violence or disturbance of the peace. 3 *Mod.* 117. 2 *Bulst.* 330. Nor are persons who arm in order to suppress rioters, rebels, &c. *Poph.* 121.

A constable is also authorised by 5 Edw. 3. *c.* 14, to apprehend all suspicious night-walkers, but he must be careful to have reasonable cause of suspicion that they are ill-designing persons, before he molest them, for by *Holt*, Ch. J. "It is not lawful for a constable to take up a woman upon bare suspicion only, having been guilty of no breach of the peace, nor any unlawful act; for it is not a constable's *suspecting* that will justify his taking up a person, but there must be *just grounds of suspicion*; that is, if I suspect a person where a *felony is done*, it is warrant enough for me to arrest him; but it would be hard that the liberty of the subject should depend on the will of a constable; and shall his not liking a woman's looks be any cause of suspicion?" 2 *Ld. Raym.* 1301.

And by 32 Geo. 3. *c.* 53, sec. 17, it is enacted, that any constable, or watchman, may apprehend any suspected person, or reputed thief, and convey him before a justice; and if it appears on the oath of a credible witness that he is of evil fame, and he shall not be able to give a satisfactory account of himself, he shall be deemed a vagabond, within the intent of the act of 17 Geo. 2. *c.* 5, which see *post*.

But if any person shall think himself aggrieved, he may appeal to the quarter sessions, on entering into a recognizance, with two sufficient sureties; and if conviction be affirmed, the justices may proceed as they might have done if the party had been committed: but no person convicted under this act shall become liable to any other punishment than imprisonment to hard labour for a term not exceeding 6 months.

(City of London)

But by sec. 18 of the above stat. it is provided, that nothing therein shall deprive the city of *London* of any rights or jurisdiction which they had heretofore lawfully exercised within the borough of *Southwark*.

In caſes of felony, it is certain that a conſtable may, *ex officio*, arreſt and impriſon the offender, until he can conveniently be conveyed to a juſtice of peace, or the common gaol, and that whether the felony be committed in the ſame, or any other village, town, or county, ſo that the felon be within the precinct over which he is conſtable. 1 *Wil. Juſt.* 195. And if the felon reſiſt, and will not be taken, or if being taken, he is reſolute in ſtriving to eſcape, it is not felony, but only juſtifiable homicide in the conſtable if he ſhoot or otherwiſe kill him in order to prevent his eſcape; but if in the attempt to make ſuch arreſt the conſtable or any of his aſſiſtants be killed (after notice that they are ſuch) it will be murder: for as by virtue of his office he is a conſervator of the peace, he is not only permitted, but enjoined to apprehend all felons that he has notice of; and if he permit them to eſcape, or be in any way negligent in his duty, he may be indicted, fined, and impriſoned; and the law protects him in the due execution of his office, and will never puniſh him in the neceſſary purſuit of what it enjoins him. *Ibid.* and 1 *Hawk. P. C.* 170.

Arreſts in felonies.

And it is not neceſſary in order to authoriſe him to apprehend a felon, that he ſhould ſee the felony committed (which could ſeldom happen), it is ſufficient if he has information given him of the felon; upon which he is bound to make ſearch for him, and raiſe hue and cry and purſuit after him, within the limits of his juriſdiction. *Ibid.* And ſo, alſo, is a conſtable and his aſſiſtants juſtified in arreſting a man upon his *being charged* of felony, although it turn out that no felony has been committed; for he that makes the charge is the perſon who is to be anſwerable, the conſtable does no more than what he is in duty bound to do when he carries him before a magiſtrate, who is empowered to examine into the circumſtances of the caſe, and commit or diſcharge as he ſees fit. 1 *Doug.* 360.

This doctrine was alſo recognized in an action of aſſault and falſe impriſonment, againſt a conſtable who had arreſted the plaintiff in a violent manner, and *without any poſitive charge of felony againſt him in particular*, but under ſtrong circumſtances of ſuſpicion that he was the perſon who had committed it. In this caſe, on a verdict being found for the plaintiff, the court of King's Bench granted a new trial. See *Gald.* 291.

If a felon *before* he is arreſted fly into another county,

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he must be taken before a justice of that county, or to the gaol of that county where he is apprehended; but if he be once arrested, and *afterwards* escape, and fly into another county, and be retaken in immediate pursuit, he may be brought back to the justice or gaol of the county from which he fled; for in this latter case he, in supposition of law, continues in custody by virtue of the first arrest, and that as well where the arrest is of the constable's own authority, as where it is done by warrant of a justice. *Ibid.*

And in this case it is expressly enacted by 24 Geo. 2. *c.* 55, that constables and others, on having a warrant indorsed by a justice in another county, whither an offender shall have escaped, may arrest him in such other county, and take him before the justice who indorsed the warrant, or some other justice of such other county, in order to find bail, if the offence be bailable, but if the offence be not bailable, then he shall carry him back before a justice of the county from whence the warrant first issued.

Manner of executing warrant.

If a warrant be directed generally to all constables, no constable can execute it out of his own district; but if it be directed to a particular constable by name, he may execute it (though he is not bound to do it) any where within the jurisdiction of the justice by whom it was granted. 1 *Salk.* 176. *Ld. Raym.* 546.

The officer to whom the warrant is directed and delivered ought to find out the party and execute it with all convenient speed; the arrest is to be made by laying hold of, or at least touching, the party; for if the constable or officer merely desires the offender to go with him before a justice, or says he has a writ for him, or that he arrests him, or the like, *without touching him*, it is not a legal arrest. 6 *Mod.* 173. It has been held, however, that when a constable found the party in a room, and told him that he arrested him, and *locked the door*, the arrest was good, for he was then in custody of the officer. *Ca. Temp. Hard.* 301.

Though the warrant be directed to two or more constables jointly, any one of them singly may execute it. 1 *Will. Inst.* 206.

And an arrest may be made as well in the night as in the day time, whether it be at the suit of the king, or of a private person, for otherwise the offender might make his escape. 9 *Co.* 66.

As it may also in a franchise or liberty, in cases of

felony, which being at the king's ſuit, virtually includes a *non omittas*.

A conſtable being a known and ſworn officer within his own precinct, is not obliged to ſhew his warrant on its being demanded; but if he be not ſworn, or act out of his own precinct, he muſt produce his warrant if it be demanded; it is proper, however, in either caſe, for the officer to acquaint the party with the ſubſtance of the warrant, and the cauſe of the arreſt. 6 *Co.* 54. 9 *ibid*, 69. 3 *Haw. P. C.* 182.

And by 27 Geo. 2. *c.* 20, it is enacted, that in all caſes where a juſtice of the peace is impowered by ſtatute to iſſue a warrant of *diſtreſs* for the levying any penalty inflicted, or ſum of money thereby directed to be paid, the officer executing ſuch warrant ſhall, if required, ſhew the ſame to the perſon whoſe goods and chattels are diſtrained, and ſhall alſo ſuffer him to take a copy thereof, if he deſire it.

In executing a warrant the officer muſt be careful to purſue the directions of it, otherwiſe he will be liable to an action of falſe impriſonment: thus, where a warrant was directed to take up a diſorderly woman, and he took up one who was not ſo, the arreſt was adjudged to be illegal, and the officer ſubject to an action for the injury. 3 *Haw. P. C.* 182. And ſo, likewiſe, where a warrant was directed by the ſecretary of ſtate to the king's meſſengers, to take up the author, printer, or publiſher of a certain libel, and they took up a perſon who was neither author, printer, nor publiſher, a ſimilar adjudication was given, for in neither caſe had the officers purſued the directions of their warrants. 11 *Sta. Try.* 307, 312, 321. 3 *Bur.* 1692, 1742.

A conſtable cannot juſtify arreſting another by virtue of a warrant from a juſtice, which evidently appears on the face of it to be for an offence over which the juſtice has no juriſdiction, or to bring the party before him at a place out of the county. 3 *Haw. P. C.* 175.

Nor where the warrant has been altered by inſerting the name of another officer, or the like. 6 *Term Rep.* 122.

But he is juſtified in executing a *general* warrant to bring a perſon before the juſtice to anſwer ſuch matters as may be alledged againſt him on the part of the king, for he is to preſume the juſtice has connuſance, unleſs the contrary

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appear. *Ibid.* But it ſeems to be the better opinion that a conſtable cannot juſtify executing a *general warrant* to ſearch for felons, ſtolen goods, &c. for it would be extremely dangerous to entruſt a common officer to arreſt what perſons, and ſearch what houſes he thinks fit. 4 *Black. Com.* 290. 3 *Haw. P. C.* 175.

And in a matter wherein the juſtice has juriſdiction, although he go beyond his authority, yet the warrant is not diſputable by the officer. *Dalt.* 579. And ſo likewiſe where a warrant is directed from a juſtice to arreſt a particular perſon for felony, or any other miſdemeanor ſuppoſed to be committed within his juriſdiction, the officer may lawfully execute it, whether the perſon mentioned in it be in truth guilty or innocent, or whether any felony has been committed or not; for however the juſtice himſelf may be puniſhable for granting a warrant without ſufficient grounds, it is not fit that the officer ſhould be anſwerable who is not to examine or diſpute the propriety of the proceedings of the juſtice; and as the perſon injured has an action againſt the juſtice who granted the warrant, there ſeems to be no occaſion to give a further remedy againſt the officer who obeyed it. *Stra.* 1002. *Cro. Eliz.* 130. 1 *Leon.* 187.

And it is ſaid by Mr. Juſtice Blackſtone, 4 *Com.* 291. that a warrant properly penned will at all events indemnify the officer who executes it miniſterially.

In what caſes doors may be broken open.

It is in ſome caſes neceſſary to break open places of habitation in order to ſecure an offender againſt the laws, but it is in caſes of neceſſity only that this extremity is permitted; wherefore it has been held, that no one, whether conſtable or other officer, can juſtify the breaking open another's door to make an arreſt, without firſt acquainting him with the cauſe of his coming, and requeſting admittance: and in this caſe, if the officer have a legal warrant, no particular form of notice is requiſite; it is ſufficient if the party be made acquainted that the officer comes under a proper authority, and not as a mere treſpaſſer. *Foſt. Cr. L.* 137, 320. 5 *Co.* 91. But if he be then denied entrance, he is authorized to break open the doors, and force an entry in the following caſes, viz.

1. Upon a writ of *capias on an indictment*, for whatever crime, or upon a *capias* or warrant of a juſtice to find ſureties for *good behaviour*. *Foſt.* 136. 12 *Co.* 131, or a *capias ut lagatum*, or *capias pro fine* in any action whatſoever. *Moor* 606. *Cro. Eliz.* 908. *Yelv.* 28.

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2. Upon warrant of a juſtice of the peace in execution of a judgment, or conviction for a forfeiture, grounded on any ſtatute which gives ſuch forfeiture, or any part thereof to the king, and authorizes a juſtice of peace to award the ſame. 2 *Jones* 233. But in this caſe the officer muſt, in purſuance of 27 Geo. 2. *c.* 20, ſhew the warrant if demanded.

3. Where it appears to the ſatisfaction of a juſtice, (either upon view or inquiſition) that the offender forcibly entered the houſe, or be forcibly detained. 3 *Haw. P. C.* 184.

4. When a perſon having committed a felony, or given another a dangerous wound, be immediately purſued by the officer. *Ibid.* But where it is only *ſuſpected* that a perſon has committed a felony, &c. (and not having been indicted) an officer cannot of his own accord juſtify breaking open a door to apprehend him. *Forſt.* 321. 4 *Inſt.* 117. *But ſee* 1 *Hale, H. P. C.* 583.

5. In ſuch caſe of an hue and cry as is mentioned, *poſt*, p. 74.

6. Where a perſon having been once arreſted, afterwards eſcapes, and ſhelters himſelf within a houſe. 6 *Mod.* 173, 211. *Salk.* 79. *Ld. Raym.* 1008.

7. It is enacted by 3 and 4 Jac. 1. § 35, that upon any lawful writ, warrant, or proceſs awarded to any ſheriff, or other officer, for the taking of any popiſh recuſant, ſtanding excommunicated for ſuch recuſancy, it ſhall be lawful to break open any houſe, or doors, for the purpoſe of apprehending him. But the author is happy in having it in his power to obſerve, that though this act ſtill remains on our ſtatute books, the laudable ſpirit of toleration which has ſince prevailed, has long rendered it obſolete in practice.

And the above poſitions refer as well to the houſe of another perſon as that of the offender himſelf. *Hale H. P. C.* 117.

8. In caſes of affray (which we in part ſpoke of, ante p. 61.) if it be made within an houſe in the view or hearing of a conſtable, or where thoſe who, having cauſed an affray in his preſence, fly to an houſe, and are immediately purſued by a conſtable, who is refuſed entrance, he may juſtify forcing an entry. *Ibid.* 95. 3 *Haw. P. C.* 184.

Or, if there be diſorderly drinking, or noiſe in an houſe at an unſeaſonable time of the night, (eſpecially in an inn, tavern, ale, or coffee-houſe) the conſtable, or his watch, may, after demanding entrance, and refuſal, break open

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the door in order to see what is doing, and to suppress the disorder. 2 *Hale H. P. C.* 95.

And if an officer enter a house to serve a warrant, and the doors be locked upon him, he may break open the doors to regain his liberty; which the law allows of even in *civil* process under such circumstances. 3 *Haw.* 184. *Cro. Jac.* 555. *Fost.* 319.

When doors may not be broken open,

But upon a general warrant expressing neither treason, felony, or surety of the peace, an officer cannot break open any door to execute it. 1 *Hale H. P. C.* 584.

Nor can he lawfully break open the doors of persons named in any warrant made in pursuance of a statute authorizing justices to require persons to come before them for the purpose of taking oaths, such warrant not being grounded on any precedent offence; nor does it appear that the party either is or will be guilty of one. 3 *Haw. P. C.* 184.

Nor can an officer justify the breaking open an *outer* door or a window in order to execute any process in a *civil* suit; but if he find the outer door open, or it be opened to him, he may force any inner door for that purpose. *Fost. Cr. L.* 319. And this privilege is strictly confined to *outer* doors of an *house*; so that if an officer gain admittance into the house where any person lodges whom he is in search of, he may justify breaking open the door of any of the *apartments* to execute his process. *Cow.* 1.

But, as we have seen before, this restriction is confined to arrests in the *first instance*, for if the person arrested make his *escape*, the officer may justify the breaking open any house or doors to *retake* him.

What an officer is to do with his prisoner after arrest.

When an offence is committed, for which the constable is authorised to arrest the party, he must carry him to the sheriff of the county, or his gaoler, or if it be within a franchise, he may convey him to the gaoler of the franchise, who are bound to receive him. 2 *Hale H. P. C.* 95. But the safest and best way in all cases is to bring the party before a justice of the peace, by whom he may be bailed or committed, as the case may require; for till the offender be bailed or discharged, or the sheriff or bailiff has received him, he remains under the charge of the officer who took him. *Ibid.*

And if he cannot conveniently convey the offender to a justice of the peace, or the common gaol immediately, as if it be in or near night, or there be danger of a rescue, he may place him in the stocks, or if there be no stocks in

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that village, he may take him to the ſtocks of the next adjacent village; as alſo in the caſe of a ſudden affray through paſſion or exceſs of drink, the conſtable or his watch may put the offenders in the ſtocks till the heat of their paſſion or intemperance be over, or till he can take them before a juſtice. *Ibid.*

If the arreſt be made by virtue of a warrant, the priſoner is to be taken before a juſtice, or otherwiſe as the warrant directs; if it direct him to be taken, not before the juſtice who granted it in particular, but before any juſtice of the county, it is at the option of the officer to take him before which juſtice he thinks fit, and not at the election of the priſoner, and ſee *ante* p. 65, laſt paragraph.

And *Note*: that after execution of the warrant the conſtable is not bound to return the warrant itſelf to the juſtice; but may keep it for his juſtification, in caſe he ſhould be called in queſtion for what he has done under its authority. 2 *Ld. Raym.* 1196.

BAIL. At common law, the conſtable was empowered to bail perſons arreſted for any bailable offence, but the ſtatutes empowering juſtices of the peace to admit to bail, ſeem now to have virtually deprived the conſtable of this authority. Bail.

BASTARDS. The conſtable is the proper officer to execute a juſtice's warrant to apprehend the reputed father of a baſtard child; and if he neglect his duty in this reſpect, or permit the party to eſcape after arreſt, he will be liable to be indicted and fined. Baſtards.

BAWDY HOUSES. The conſtable on information given him that a man and woman are in adultery or fornication together, or are gone to any houſe of evil fame in the night-time, is to proceed to ſearch the ſame, and if he find any ſuch perſons, he is to carry them before a juſtice to find ſureties for their good behaviour. 1 *Wms. Juſt.* 367. Bawdy Houſes.

BRIDGES. By 22 Hen. 8. *c.* 5, and 1 Ann. *c.* 18, conſtables are authoriſed and enjoined in caſe any common bridge be in decay, and it is not known to whom it belongs to repair the ſame, to ſummon two of the moſt able inhabitants in the pariſh, who are to make an aſſeſſment for repairing thereof, which aſſeſſment being allowed by four juſtices of the diviſion, ſhall be levied by the ſaid conſtables on the inhabitants. *Shaw P. L.* 326. And thoſe who are bound to repair, are alſo bound to widen or Bridges.

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remove the ſame, if the public convenience require it. 6 *Term Rep.* 194.

County Rate.

COUNTY RATE. By 12 Geo. 2. *c.* 29. it is enacted, that *in caſe no rate is levied* in any pariſh, townſhip, or place, *for the relief of the poor*, the petty conſtable, or other peace officer is to levy the county rate (as poors rates are levied, which ſee *ante*, p. 47), under the direction of the juſtices at their quarter ſeſſions, and ſhall, when levied, be paid by ſuch petty conſtable to the high conſtable of the diviſion. And the ſame ſhall be paid by or levied upon ſuch petty conſtable in like manner as rates are levied upon churchwardens and overſeers of the poor.

It is alſo by the ſame act provided, that if any petty conſtable pay ſuch ſum before the ſame be by him rated and levied, he may afterwards rate and levy the ſame, or may be allowed the ſame out of any conſtable's or other rates made upon ſuch pariſh or place.

And the ſaid act is declared to extend to the counties of *York*, *Derby*, *Durham*, *Lancaſter*, *Cheſter*, *Weſtmoreland*, *Cumberland*, and *Northumberland*, *even though poor rates be there levied*.

Diſtreſs.

DISTRESS. By 11 Geo. 2. *c.* 19. conſtables are to aſſiſt landlords in diſtraining for rent in arrear, under the authority of a juſtice's warrant, and in company with ſuch landlord may break open and enter into houſes, &c. to ſearch for goods ſuſpected to be concealed there for avoiding the diſtreſs.

And by 2 Will. & Mar. ſeſſ. 1. *c.* 5. if the party whoſe goods have been diſtrained ſhall replevy the ſame, the ſheriff or conſtable of the place ſhall cauſe the ſame to be appraiſed by two ſworn appraiſers, and ſhall adminiſter the oath to ſuch appraiſers truly to appraiſe the ſame, according to the beſt of their underſtanding. *See more of the law relating to* DISTRESS, *in the diviſion of our work entitled*, "The LAWS relating to LANDLORDS and TENANTS."

Drunkenneſs.

DRUNKENNESS and *tipling*. The ſtat of 1 Jac. 1. *c.* 9. § 2, having inflicted certain penalties for drunkenneſs and tipling in inns, alehouſes, &c. to be levied by the *conſtables* or churchwardens by diſtreſs, it is by the 3d ſec. of that act provided, that if the conſtables or churchwardens neglect to levy the ſaid penalties on conviction of the ſaid offence, or, if there be no diſtreſs wherewith the ſame may be levied, do not certify the ſame for the ſpace of twenty days, to the mayor or other head officer, within whoſe juriſdiction the offence is committed, they ſhall for-

feit the ſum of 40*s.* to the poor, to be levied by diſtreſs, which ſhall be detained ſix days, and if the ſame be not paid within that time, the goods ſhall be appraiſed and ſold, and the ſurplus paid over to the party; and for want of diſtreſs ſuch conſtables or churchwardens ſhall be committed to the common gaol till the ſaid penalty be paid. CONSTABLE.

And further, if the conſtables or other officers neglect to levy certain other the penalties, or to inflict the puniſhment they are directed to levy and inflict by ſtat. 4. *c.* 5, of the ſame king, he ſhall forfeit the ſum of 10*s.* to be paid to the poor, and levied in manner aforeſaid.

EXCISE. By 11 Geo. 1. *c.* 30, ſect. 30, it is enacted, that if any *conſtable* or other miniſterial officer of the peace, ſhall on requeſt made by any officer of *exciſe* to go along with him, or to be preſent at the doing of any thing, for the doing whereof his preſence is required by any ſtatute, and ſuch conſtable or other officer ſhall neglect or refuſe ſo to do, he ſhall forfeit the ſum of 20*l.* to be levied by diſtreſs and ſale as in other caſes. Exciſe.

FELONY. See ARRESTS, ante p. 63. Felony.

FIRE. On the happening of any fire all conſtables of the pariſh or diſtrict are required by 6 Ann. *c.* 31, to attend, in order to aſſiſt in ſtopping its progreſs, and to prevent diſorders. Fire.

HAWKERS. By 11 Geo. 2. *c.* 26, ſect. 7, it is provided, that if any conſtable or other miniſterial officer of the place, ſhall refuſe or neglect on requeſt, or on their own view of the offence, to aſſiſt in the execution of the ſaid act, or of the acts of 9 Geo. 2. *c.* 23, and 10 *ibid*, *c.* 17, (touching the hawking and ſelling of ſpirits without licence) he ſhall forfeit the ſum of 20*l.* one moiety thereof to be paid to the poor of the pariſh, and the other to the informer. Hawkers.

HORSES. By 25 Geo. 3. *c.* 49, all conſtables are to be aiding and aſſiſting in the execution of that ſtatute, impoſing a duty on horſes, and they are ordered to obey and execute ſuch precepts as ſhall be directed to them by the commiſſioners. Horſes.

HUE AND CRY. By 8 Geo. 2. *c.* 16, it is enacted, that every conſtable of any place or diſtrict wherein any robbery ſhall happen, as ſoon as the ſame ſhall come to his knowledge, either by notice from the party robbed, or from any other to whom notice ſhall be given thereof, purſuant to that or any other ſtatute, ſhall with the utmoſt expedition, make freſh ſuit and *hue and cry* after the Hue and cry.

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felon, and if he ſhall offend in the premiſes by refuſing or neglecting to make freſh ſuit, and hue and cry, he ſhall forfeit 5*l.* one moiety to the king, and the other moiety to him that will ſue for the ſame.

And officers neglecting to levy hue and cry, or to purſue it when levied, are alſo indictable at common law, and may be fined and impriſoned. 2 *Hale H. P. C.* 104.

How hue and cry to be made.

The regular method of making hue and cry is, for the party robbed to proceed to the conſtable of the diſtrict, or next town, and deſcribe the offender, and the direction in which he is gone, whereupon the conſtable is bound immediately, whether it be by day or by night, to raiſe the pariſh, or as many thereof as may be neceſſary, and make diligent ſearch for the offender, and on not finding him, is to ſend, with the utmoſt expedition, to the conſtables of all the neighbouring towns, who are in like manner to make ſearch for the offender, and alſo give notice to their neighbouring conſtables, and they to the next, and ſo on till the offender be found. 3 *Hawk. P. C.* 158. And the conſtable is, according to Ch. J. *Hale*, not only to make ſearch in his own village, but is alſo to raiſe all the neighbouring villages, who are to purſue the hue and cry with horſemen, as well as footmen. 2 *Hale P. C.* 101.

The power of the conſtable in purſui g offenders.

In caſe of hue and cry for a ſuppoſed felony committed, though there ſhould turn out to be none, or the party entirely innocent, yet the conſtable may proceed as if there actually had been, becauſe he cannot examine the truth or falſehood of the allegation of the perſon who firſt levied it; for he cannot adminiſter him an oath; and if he ſhould delay purſuit till the matter could be examined by a juſtice of the peace, the felon might eſcape, and the purſuit be fruitleſs; therefore the conſtable is juſtified in arreſting any one againſt whom a *hue and cry* is regularly levied, and may impriſon him in the common gaol till he can take him before a juſtice of the peace. *Ibid* 102.

And, if the perſon purſued by hue and cry be in an houſe, and the door is faſtened, and is refuſed to be opened on demand of the conſtable, he may (after giving notice of the buſineſs he comes upon) break open the door, and force admiſſion; and this he may do in all caſes where he may *arreſt* the party, though it be only on ſuſpicion of felony; for as in ſuch caſes it is at the ſuit of the king, a *non omittas* is, as we formerly obſerved, virtually inferred. *Ibid.*

The ſame law alſo holds where a hue and cry is levied

on a dangerous wound being given. *Ibid.* And it is said by *Hale*, Ch. J. that in this case the constable is justified in killing the offender, if he cannot be otherwise taken, 2 *H. P. C.* 102. But the author cannot but dissent from this doctrine, though affirmed by so great an authority. In no case of *suspicion* can he hold that an officer is justified in proceeding to that extremity; and all cases of hue and cry must, as to the *officer*, be cases of suspicion merely; in truth, cases of this sort frequently proceed from motives the most mercenary and infamous. CONSTABLE.

When hue and cry comes to a constable he is authorised to search any suspected place within his vill, in order to apprehend the offender; but he cannot justify breaking open doors merely to search without knowing whether he be there or not; but if he knows the offender to be in any particular house he lawfully may. It must always, however, be remembered, that in the case of breaking open doors, notice must first be given to those within of his coming, and demand of entrance must also be made, and a refusal given before the door can be forced. See ante p. 68.

In common cases we have seen that a man cannot be arrested upon any other than express and defined grounds; but in cases of hue and cry, from the nature of the thing, greater latitude is allowed, and therefore, upon a general description of the stature, clothes, horse, &c. of the supposed offender, the officer is justified in apprehending one who answers to the description given, whether guilty or not. 2 *Hale H. P. C.* 103.

And (where the hue and cry is for any species of felony) the constable is bound to pursue the hue and cry, which is raised, even though no description of any kind can be given of the offender. All therefore that can be done in such a case is to apprehend such persons whom he may find probable cause to suspect, as for instance, those who cannot, or will not, on demand, give a satisfactory account of themselves.

Those who are taken up on hue and cry, it is said, are not bailable, because they are deemed to be under a violent suspicion of guilt. *Carth.* 79. 3 *Hawk. P. C.* 202.

HIGHWAYS. The duty of constables in respect of highways will be found post, cap. vii. Highways.

JURIES. By 3 Geo. 2. *c.* 25, all petty constables are enjoined to deliver to the high constable on oath in *Michaelmas* sessions yearly, correct lists of all persons qualified Juries.

CONSTABLE. within their reſpective pariſhes to ſerve on juries, within the ages of 21 and 70 years; in which liſts they are to inſert the Chriſtian and ſur-names, occupations, and places of abode, of the perſons whoſe names they ſhall ſo deliver.

And every conſtable who ſhall neglect or omit to return ſuch liſts, ſhall forfeit the ſum of 30*s.* and if he wilfully omit the names of any perſons qualified to ſerve, or inſert wrong names, he ſhall forfeit the ſum of 20*s.*

LEAD STOLEN. See ROGUES and VAGABONDS.

Lottery. LOTTERY. By 27 Geo. 3. *c.* 1, conſtables are required to uſe their utmoſt endeavours to detect perſons ſelling tickets without licence, and alſo perſons inſuring numbers of tickets, and in ſo doing they ſhall be indemnified from harm.

Militia. MILITIA. If any conſtable of any hundred, or any petty conſtable, ſhall neglect or refuſe to return the liſts of perſons liable to ſerve in the militia, as by the deputy lieutenants of the county directed, or ſhall wilfully make a falſe return, he may be impriſoned in the common gaol for one month, or (at the diſcretion of two deputy lieutenants) be fined a ſum not exceeding 5*l.* nor leſs than 40*s.*

MISDEMEANORS. See ARRESTS and AFFRAYS.

Paſs. PASS. By 17 Geo. 2. *c.* 5, all conſtables receiving any paſs or certificate from a juſtice with any vagrant, &c. ſhall convey ſuch perſon according to the direction of the ſaid paſs, and the *neareſt way* to the place to which he is ordered, if it be within the ſame county or diviſion; but if not, the ſaid conſtable ſhall deliver ſuch perſon to the conſtable of the next county, pariſh, or diviſion, in the direct way to the place to which ſuch vagrant may be ſo ordered, together with the paſs and duplicate of his examination; and ſuch conſtable ſhall without delay apply to ſome juſtice in the ſame county or diviſion, who ſhall make and deliver to him the like paſs or certificate for the next conſtable, and ſo on, from place to place, till they arrive at the place to which the ſaid vagrant is ſent; the conſtable delivering ſuch paſs and certificate is directed to take a receipt for the ſame from the conſtable to whom he ſo delivers them, (the form of which ſee in APPENDIX). The like receipt is alſo to be taken in this caſe of the churchwarden or other perſon to whom the vagrant is directed.

And, by the ſaid act, any conſtable counterfeiting ſuch certificates or receipts, or knowingly permitting any alterations to be made therein, ſhall forfeit 50*l.*

And if any conſtable ſhall neglect to convey ſuch vagrant, &c. according to ſuch paſs, or if he ſhall refuſe to receive any ſuch perſon, or to give ſuch receipt as aforeſaid, he ſhall forfeit 20*l.* the ſame to be levied by diſtreſs and ſale of goods. CONSTABLE.

But by 35 Geo. 3. *c.* 101, in caſe ſuch vagrant, &c. ſhall be taken ſick by the way ſo as to be unable to travel without danger, the conſtable is to take him before a juſtice for the purpoſe of having ſuch paſs ſuſpended as long as there may be occaſion.

And if he ſhall neglect his duty in any *other* reſpect, concerning the matters aforeſaid, he ſhall forfeit a ſum not exceeding 5*l.* nor leſs than 10*s.* to be paid to the poor and levied by diſtreſs, and for want of diſtreſs to be committed to the houſe of correction, and kept to hard labour for a ſpace not exceeding two months.

PENALTIES. The conſtable is directed by various ſtatutes to levy penalties for offences under the authority of a warrant from a juſtice. Penalties.

And by 13 and 14 Car. 2. *c.* 26, he is required to levy 30*s.* per firkin, upon perſons guilty of any fraud in ſelling butter wholeſale; and by 3 Car. 1. *c.* 1, 20*s.* upon carriers travelling upon a Sunday.

PRESENTMENT. See this title, ante, p. 14.

RATE. See COUNTY RATE. Rate.

RIOTS. By the common law conſtables and other peace officers are bound to do all that in them lies to ſuppreſs riots; and they may command all other perſons to aſſiſt them. Riots.

And by 1 Geo. 1. *c.* 5, (uſually ſtiled the Riot act) conſtables and other peace officers are expreſly commanded to be aſſiſting the juſtices in ſuppreſſing any riot, and apprehending all offenders in that reſpect.

ROADS. Every conſtable neglecting or refuſing to enforce the ſtatute of 13 Geo. 3. *c.* 84, reſpecting turnpike roads, or to account for any forfeitures as thereby directed, ſhall, for every ſuch neglect, forfeit the ſum of 10*l.* or if he ſhall refuſe to execute any warrant under the ſaid act, he ſhall forfeit a ſum not exceeding 10*l.* nor leſs than 40*s.* at the diſcretion of the juſtice of the diviſion; and if ſuch penalties be not forthwith paid, he ſhall be committed to gaol, or to the houſe of correction, for a ſpace not exceeding three months. *See more poſt*, chap. vii. Roads.

ROGUES and VAGABONDS. By 17 Geo. 3. *c.* 5, it is Rogues and vagabonds.

CONSTABLE. enacted, that conſtables ſhall apprehend all *rogues and vagabonds* (*a*), and convey or cauſe them to be conveyed to a

(*a*) Rogues and vagabonds are by the ſaid act declared to be

1. Perſons wandering about, or begging under pretence of caſual loſſes.

2. Perſons going about under pretence of collecting for priſons, gaols, or hoſpitals.

3. Fencers.

4. Bearwards, viz. Perſons loitering about, ſhewing or dancing bears.

5. Perſons acting plays and other like performances, without a ſufficient licence.

6. Minſtrels or perſons playing about the ſtreets or pariſh on muſical inſtruments.

7. Jugglers.

8. Gypſies, or perſons pretending to be ſuch.

9. Fortune-tellers.

10. Perſons going about in any reſpect to deceive, delude, or impoſe upon the common people.

11. Gamblers.

12. Perſons running away from their wives and families, ſo as that they become chargeable to the pariſh.

13. Pedlars, or petty chapmen not duly licenced.

14. All perſons wandering about, without any apparent ſettled place of abode, and not being able to give a good account of themſelves.

15. All beggars who pretend to be ſoldiers or ſea-faring men.

16. All other perſons wandering about, and ſeeking their livelihood by begging.

17. (By 23 Geo. 3. *c.* 88.) Perſons having upon them picklocks, or other inſtruments for entering or breaking open houſes, &c. or any piſtol or other offenſive weapon, with an intent to aſſault any one, or who ſhall be found loitering about with an intent to ſteal any goods or chattels.

N. B. The following deſcription of perſons are emphatically termed *incorrigible* rogues.

18. End-gatherers, viz. Perſons collecting or carrying away ends of yarn, or other woollen goods.

juſtice of the peace; and any other perſon may alſo apprehend the ſame, and take them to a juſtice, or to the conſtable, and the juſtice ſhall reward ſuch perſon, whether conſtable or not, by ordering the high conſtable to pay him the ſum of 10*s.* within a week after the ſame be demanded; and in towns corporate, and other places where there is no high conſtable, the petty conſtable ſhall himſelf *retain* or pay ſuch reward, and be allowed it in his accounts, on producing a receipt thereof; and if ſuch high or petty conſtable ſhall not pay ſuch reward within the time aforeſaid, he ſhall forfeit 20*s.* CONSTABLE.

And further, if the conſtable of the pariſh or diſtrict ſhall not uſe his beſt endeavours to apprehend or convey to ſome juſtice ſuch offender, he ſhall, on conviction thereof by the oath of one witneſs, before a juſtice, forfeit 10*s.* to the poor, to be levied by diſtreſs.

And by 22 Geo. 3 *c.* 58, every conſtable, beadle, and watchman upon duty, ſhall apprehend any perſon reaſonably ſuſpected of having, between ſun-ſetting and ſun-riſing, any lead, iron, copper, braſs, bell-metal or ſolder ſuppoſed to be ſtolen, and carry the offender before the juſtice.

SERVANTS. Conſtables are directed to be aiding and aſſiſting in the execution of the act of 25 Geo. 3, reſpecting the duty on ſervants, and to obey and execute the precepts directed to them by any three of the commiſſioners. *See this act in the diviſion of our work entitled* "The Laws reſpecting MASTERS and SERVANTS." Servants.

SHEEP. See WOOL.

SOLDIERS. By the annual *mutiny act*, § 24, it is provided, that if any conſtable preſume to quarter or billet any officer or ſoldier in any private houſe, without the Soldiers.

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19. Perſons who, having been apprehended as rogues and vagabonds, eſcape from their keepers, or who refuſe to go before a juſtice, or to be conveyed by a paſs to their proper pariſh.

20. All rogues and vagabonds eſcaping out of any houſe of correction before the expiration of the term for which they were committed.

21. Perſons who, having been diſcharged from puniſhment as rogues and vagabonds, ſhall again be guilty of any of the aforeſaid offences.

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conſent of the owner, ſuch owner ſhall have his remedy at law againſt ſuch officer for the ſaid damage.

And that if any conſtable ſhall quarter any of the wives, children, men or maid ſervants of any officer, or ſoldier, in any houſe, againſt the conſent of the owner, he ſhall forfeit the ſum of 20*s.* to be levied by diſtreſs.

And it is further provided, § 43, that the conſtables in Weſtminſter ſhall, at every quarter ſeſſions for that city, deliver to the juſtices upon oath, liſts, ſigned by them, of all houſes ſubject to receive ſoldiers, together with the number of officers and ſoldiers quartered in each houſe; and if any one neglect to deliver ſuch liſt, or deliver a falſe or defective liſt, he ſhall forfeit 5*l.* to the uſe of the poor, to be levied by diſtreſs and ſale of goods; or for want of diſtreſs, ſhall be committed to the common gaol for a time not longer than 3 months, nor leſs than one.

Alſo, if any conſtable, or other officer, ſhall neglect, for the ſpace of two hours, to quarter officers or ſoldiers when required, (provided ſufficient notice be given of their arrival) or ſhall receive, demand, or agree for any money, or reward, for excuſing any perſon from quartering any ſuch officer or ſoldier, every ſuch offender ſhall forfeit a ſum not exceeding 5*l.* nor leſs than 40*s.* to be levied by diſtreſs and ſale of goods.

Surveyors.

SURVEYORS. By 13 Geo. 3. *c.* 18, it is provided, that on the 22d day of September in every year, the conſtables of the pariſh or diſtrict, together with the churchwardens, and the houſeholders aſſeſſed to parochial or public rates, ſhall meet at the time and place therein appointed, for the purpoſe of nominating liſts of perſons out of which ſurveyors of the highways are to be choſen for the year enſuing.

And further, that the ſaid *conſtables* ſhall within three days after ſuch meeting tranſmit a duplicate or copy of the liſt there made, to one of the juſtices living near ſuch pariſh, or place, and ſhall, alſo, within 3 days after ſuch liſt is made, give perſonal notice to, or cauſe notice in writing to be left at the place of abode, of the ſeveral perſons in the ſaid liſt contained, informing them thereof, in order that they may ſeverally appear before the juſtices at their next ſeſſions, to be for that purpoſe held, and ſhall return the original liſt to the juſtices at their ſaid ſeſſions; and after a perſon has been choſen ſurveyor by the ſaid juſtices, the ſaid conſtable ſhall, within 3 days next after, ſerve ſuch perſon with the warrant of appointment, either

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by leaving the ſame, or a true copy thereof, at his houſe, or uſual place of abode. *See alſo poſt, cap.* vii.

Swearing.

SWEARING. It is enacted by 19 Geo. 2, *cap.* 21, that in caſe any perſon ſhall profanely ſwear or curſe in the hearing of any conſtable, or other peace officer, ſuch peace officer ſhall, if the offender be unknown, carry him before the next juſtice, or mayor, and if the ſaid offender be known to ſuch peace officer, he ſhall give information of the ſaid offence to ſome juſtice, or mayor, in order that he may be puniſhed as directed by the ſaid act.

And if any conſtable, or other peace officer, ſhall wilfully omit the performance of his duty in the execution of the ſaid act, and of ſuch omiſſion be convicted by the oath of one witneſs, he ſhall forfeit the ſum of 40*s.* to be levied by diſtreſs and ſale of goods, one moiety thereof to be paid to the informer, and the other to the poor; and if there be no diſtreſs he may be committed to the houſe of correction, there to be kept to hard labour for the ſpace of one month.

VAGABONDS. See ROGUES and VAGABONDS.

WARRANTS. See ARRESTS.

Watch.

WATCH and WARD. It is the duty of the conſtable, as we have formerly ſtated, to keep *watch and ward*, (ſee p. 54). In the city of *London* the conſtables in each ward are to attend the watch by turns, and go their rounds from 9 in the evening, to 7 in the morning, from the 10th of September to the 10th of March; and from 10 in the evening till 5 in the morning, from the 10th of March to the 10th of September; and, with the *beadles*, they are every night to give notice to ſuch perſons as are to ſerve upon the watch in their reſpective precincts, and on their refuſing, may hire others in their ſtead, and pay them according to the cuſtom of the city. They are alſo to uſe their beſt endeavours to prevent fires, robberies, and all kind of diſorders and irregularities, and arreſt malefactors; to go twice or oftener about their wards every night, and take charge of, and conduct before a magiſtrate, all perſons delivered to them by the watchmen: and conſtables miſbehaving are to forfeit 20*s.*

Wool.

WOOL. By 28 Geo. 3. *c.* 38, it ſhall be lawful for conſtables, and other peace officers, and others acting in their aſſiſtance, to arreſt and take before a juſtice, all perſons exporting or attempting to export any ſheep or wool.

CONSTABLE.

V *Concerning the Favour ſhewn to a Conſtable in the Execution of his Duty.*

The favor ſhewn a conſtable in diſcharging the duties of his office.

By 7 Jac. 1. *c.* 5, it is enacted, that in any action brought againſt a conſtable for any thing done in execution of his office, if he recover againſt the plaintiff he ſhall have double coſts.

And by 21 of the ſame king, *c.* 12, it is declared, that ſuch action ſhall be tried in the county where the fact charged againſt him was committed, and not elſewhere.

And further, by 24 Geo. 2. *c.* 44. it is enacted, that no action ſhall be commenced againſt any conſtable or other perſon acting by his order or in his aid, for any thing done in obedience to the warrant of a juſtice of the peace, until demand in writing, ſigned by the party, has firſt been made, or left at the uſual place of his abode, of the peruſal and copy of ſuch warrant, and the ſame has been refuſed or neglected for ſix days after ſuch demand; and if, after compliance with ſuch demand, any action be brought, without making the juſtice who ſigned ſuch warrant defendant, on producing and proving ſuch warrant at the trial, the jury ſhall give their verdict for the defendant, notwithſtanding any defect of juriſdiction in the ſaid juſtice. And if ſuch action be brought jointly againſt the juſtice and conſtable, on proof of the ſaid warrant, as aforeſaid, the jury ſhall find for the conſtable, notwithſtanding ſuch defect of juriſdiction as aforeſaid; and if the verdict be given againſt the juſtice, the plaintiff ſhall recover his coſts againſt him, to be taxed in ſuch manner as to include ſuch coſts as the plaintiff is liable to pay to ſuch defendants, for whom ſuch verdict ſhall be ſo found.

And no action ſhall be brought againſt any conſtable after ſix months from the time of the fact being committed.

Conſtruction of ſtat. 24 Geo. 2. *c.* 44.

But though a conſtable be acting *colore officii*, viz. under the pretended ſanction of his office, yet, where the act committed is of ſuch a nature as does not belong to him to do, he will not be protected by the above ſtatute. *Eſp. Ca.* 542, *note*; for in doing ſuch act he is not to be conſidered as an officer. The caſes to which the ſtat. extends being (per *Kenyon*, Ch. Juſt.) where the officer doing an

act within the limits of his official authority, exerciſes that authority improperly, or abuſes the diſcretion placed in him. CONSTABLE.

VI. *Concerning the Re-imburſement of a Conſtable's Expences.*

Re-imburſement of a conſtable's expences.

It is provided by 18 Geo. 3. *c.* 19, that every conſtable ſhall, at the end of every three months of his office, and within fourteen days after he ſhall quit his ſaid office, deliver to the overſeers of the pariſh or place, a juſt account in writing, fairly entered in a book, and ſigned by him, of all ſums by him expended and received, on account of the pariſh, in all caſes not provided for by law. (See 3 Jac. 1. *c.* 10. 27 Geo. 2. *c.* 3 and 20, *infra.*) and the ſaid overſeers ſhall, within the next fourteen days after ſuch account ſhall be delivered, lay the ſame before the inhabitants; and if the ſame be by them, or a majority of them approved of, ſuch overſeers ſhall pay out of the poor's rates the ſum that on ſuch accounts ſhall appear to be due; but if ſuch account, or any part thereof be diſallowed, then the ſame ſhall be delivered back to ſuch conſtable, who may produce the ſame before a juſtice of the peace (giving reaſonable notice thereof to the overſeers) to be examined and ſettled by him what ſum ought to be paid, and the ſaid juſtice ſhall enter ſuch ſum in the ſaid account, and ſign his name thereto, which ſum the ſaid overſeers ſhall accordingly pay; with liberty of appealing to the quarter ſeſſions, if they think themſelves aggrieved.

And by 3 Jac. 1. *c.* 10, it is provided, that every perſon who ſhall be committed to gaol by any juſtice of the peace, and ſhall not bear the charges of themſelves, and ſuch as are appointed to guard them thither, ſuch juſtice may warrant the conſtable of the place from whence ſuch perſon ſhall be committed, to ſell the goods he ſhall have within the county or liberty, to ſatisfy the ſaid charges, delivering the overplus to the party.

And by 27 Geo. 2. *c.* 3. if the perſon ſo committed to gaol or houſe of correction, have no goods or money within the county where he is taken ſufficient to diſcharge ſuch expences, then upon application by the conſtable to the juſtice, he ſhall aſcertain the reaſonable charges to be allowed and forthwith order the treaſurer of the county to pay the ſame.

CONSTABLE.

Alſo by *c.* 20, of the laſt mentioned act, it is enacted, that any officer making *diſtreſs* under a juſtice's warrant, ſhall deduct the reaſonable charges of taking, keeping and ſelling the ſame, out of the money ariſing by ſuch ſale, and the overplus remaining, (after deducting the ſaid charges and alſo the penalty, if any inflicted) ſhall be returned to the owner of the goods; and the officer executing ſuch warrant ſhall, if required, ſhew the ſame to the party, and permit him to take a copy thereof.

And by 17 Geo. 2. *c.* 5, § 17, the night conſtable ſhall pay to the petty conſtable all monies reaſonably expended by virtue of that act in paſſing vagrants, &c. to the reſpective places to which they may be ſent by order of a juſtice: and in towns and places where there is no night conſtable, he ſhall be allowed ſuch expences in his accounts on his producing proper vouchers for his payments.

VII. *Concerning the Removal of a Conſtable from his Office.*

Removal of a conſtable from his office.

We have ſeen, p. 59, that the ſheriff, or the ſteward of the leet has a power of placing a conſtable in his office: and it follows, as a legal conſequence, that thoſe who have a power of appointing have a power of removing him. 1. *Bulſt.* 174.

This authority has alſo been exerciſed time immemorial, by the juſtices of the peace of the diſtrict, and has been frequently countenanced by the legiſlature.

Alſo, by 13 and 14 Car. 2. *c.* 12, if a conſtable ſhall continue above a year in his office, he may be diſcharged by the ſeſſions, which may ſubſtitute another in his room till the next leet; and conſtables having a right to their diſcharge, may, by application to the court of King's Bench, obtain a writ of *mandamus* to compel the judge or officer of the inferior court to diſcharge him. 1 *Bulſ.* 174. 2 *Haw. P. C.* 140.

CHAP. IV.

OF WATCHMEN.

WATCH, we have obſerved, is applicable to the night ſeaſon, as ward is to the day; it was inſtituted, or rather renovated by the ſtatute of Wincheſter, (13 Ed. 1. ſtat. 2.) in order the more effectually to prevent the diſturbance of his majeſty's ſubjects by diſorderly people in their repoſe, and to apprehend all rogues, vagabonds, and night-walkers, that they may be made to give an account of themſelves.

In treating of this officer we ſhall conſider

I. The mode of his appointment.

II. His power and duty.

III. The favour and protection ſhewn him by the law in diſcharging his duty.

Appointment of watchmen.

As to the appointment of watchmen it is enacted, by the above ſtatute of Wincheſter, *c.* 4, that from *Aſcenſion day*, to the day of *Michaelmas*, ſix men ſhall keep watch at every gate in all cities; twelve men in every borough; and in every market town, four or ſix men, according to the number of inhabitants, who ſhall watch the town continually, during the night, from the time of ſun-ſetting to ſun-riſing.

But a ſtranger, not being an inhabitant of the town, is not compellable to maintain watch by virtue of this ſtatute. *Cro. Eliz.* 204.

And by 5 Hen. 4. *c.* 9, the ſame mode of watch is directed to be obſerved on the ſea coaſts; and juſtices of the peace are from time to time to inquire, in their ſeſſions after the obſervance of the ſaid ſtatute of Wincheſter, and puniſh thoſe who fail therein.

The mode of keeping watch is, for every inhabitant to keep it in his turn, either by himſelf or deputy; and it has been held that he may be indicted for refuſal, 3 *Haw.* 173, and the conſtable may preſent him for ſuch default at the aſſizes, or ſeſſions. 4 *Wiſ. Juſt.* 964.

WATCHMAN.

It has alſo been ſaid that a conſtable may put him in the ſtocks till he comply. But of this *quære*, and ſee *Cro. Eliz.* 204.

It is not, however, (it is imagined) perfectly optional in every inhabitant to ſerve or procure a deputy at his pleaſure; for as it is neceſſary for the complete diſcharge of his duty, that a watchman be of able and healthy body, he is compellable, in caſe he be of a contrary habit, to find a fit perſon to officiate for him; a woman, therefore, would not be permitted to ſerve her turn in perſon, but muſt do it by deputy, and ſuch, it is apprehended, would be the caſe were the turn to fall upon a man of notorious ill fame, for integrity of character is equally neceſſary for the due performance of his duty as corporeal ſtrength.

The ſtatute of Winchester extends, we have ſeen, only to the period between Aſcenſion day and Michaelmas: but watch may be appointed at other times by the authority of juſtices of the peace, who, as general conſervators of the peace, are allowed to appoint aſſiſtant officers at their diſcretion. 4 *Burn Juſt.* 395. *Dalt. c.* 104.

Conſtables may alſo, for the better preſervation of order within their reſpective diſtricts, appoint watchmen at their pleaſure, regulated only by the cuſtom and uſage of the place. 1 *Blac. Com.* 357.

(City of London) In the city of London watchmen are appointed by the common-council, who by the articles of the wardmote inqueſt are to hold a court yearly on the 1ſt day of October, and order a proper number of watchmen, beadles, and night conſtables for the city of London and liberties, and determine ſums to be levied upon each ward to bear the charge thereof. And the aldermen and common council of wards ſhall appoint the ſaid watchmen, ſet down in writing their reſpective ſtands, and the number of rounds they ſhall go, make orders for their regulation, and rate and aſſeſs the inhabitants for the charge.

II. *Of the Power and Duty of a Watchman in the Exerciſe of his official Capacity.*

Watchman's authority. Concerning the power of a watchman, it may be ſaid in general, that being a peace officer acting by night, as the conſtable by day, he has for the time being the ſame authority as that officer. 1 *Black. Com.* 357.

It is alſo, by the aforeſaid ſtatute of *Wincheſter*, c. 4. provided, that if any *ſtranger* (viz. any ſuſpicious perſon), paſs by the watch, he ſhall be arreſted until morning, and if no ſuſpicion be found, he ſhall go quit; but if there be cauſe of ſuſpicion againſt him, he ſhall be delivered to the ſheriff, (viz. to the county or common gaol) who ſhall keep him till he be acquitted in due manner: and if ſuch perſon will not ſubmit to the arreſt, the watchman ſhall raiſe hue and cry upon him, and ſuch as keep the watch ſhall follow him with the town's people, and ſo in the next town, from town to town till he be taken. Or he may force ſuch perſon to ſubmit to his authority by beating him, and he ſhall not be puniſhed for an aſſault. 4 *Will. Juſt.* 964.

The watchman may alſo deliver ſuſpicious perſons, and all night-walkers and vagabonds, to the conſtable of the diſtrict, or after detaining him till morning, may convey him before a juſtice of the peace to be examined. *Ibid.*

(City of London)

And in the city of *London* in particular, by the *ward-mote inqueſt*, the watchmen of the city and liberties are directed to apprehend night-walkers and vagrants, perſons going armed and diſguiſed, and all others of ſuſpicious appearance, and are to carry them before the conſtable of the night to be examined; and they are to be obedient to the orders of the conſtable in conveying ſuch perſons to the county gaol, till they can be taken before the lord mayor. *Carth. Lond.*

And if any one will not ſubmit to the arreſt of the watch, hue and cry from ward to ward may be made after him, as in other places. *Ibid.*

III. *The Favour and Protection ſhewn to a Watchman in the Execution of his Duty.*

A watchman acting in a double capacity, viz. 1. properly and purely *as a watchman, eo nomine;* 2. as an aſſiſtant to the conſtable; he has, as it were, a double protection, for,

1. As a watchman appointed to keep the peace, prevent diſorders within his precinct, &c. his authority is noticed and protected by the law: wherefore it is by the common

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law of the land declared to be felony to kill a watchman in the diſcharge of his duty.

And by 5 Ann. c. 31, it is enacted, that if any watchman be killed in the apprehending any burglar or houſe-breaker, his repreſentatives ſhall receive from the ſheriff the ſum of 40*l.*

2. As an aſſiſtant to the conſtable, where the conſtable is on the watch with him, or otherwiſe be preſent, he ſhall have the ſame protection and indemnity in all caſes as the conſtable himſelf, and ſhall moreover be diſcharged from any penalties he may incur by the order or direction of ſuch conſtable. *Hale H. P. C.* 97.

CHAP. V.

OF PARISH OFFICERS,

NOT HITHERTO TREATED OF.

I. *Concerning the Office and Duty of a* PARISH CLERK.

Pariſh clerk.

PARISH CLERKS were originally clergymen in holy orders, appointed by the incumbent parſon for the purpoſe of aſſiſting him in officiating at the ſeveral altars, (of which there were formerly ſeveral in each church) and in the celebration of other divine offices; but ſince the Reformation, when the duties of the parſon are become leſs multifarious, this practice has been diſuſed; though the pariſh clerk is ſtill, in general, nominated by the incumbent, who, by the 91ſt canon of the church, is to ſignify ſuch nomination to the pariſhioners on the next Sunday following, either before or after the concluſion of divine ſervice.

How choſen.

The pariſh clerk is, however, by the cuſtom of ſome places, choſen by the pariſhioners at a veſtry, held for that purpoſe; and where ſuch a cuſtom prevails, it is conſidered as a *temporal* or *civil* right in the pariſh, and the archdeacon is compellable by *mandamus* to confirm the object of their

choice by ſwearing him into office. *Cro. Car.* 589. 2 *Roll. Abr.* 286, 424. PARISH CLERK.

And whether appointed by the miniſter or pariſh, he is regarded by the common law as a *lay* officer, and therefore cannot be removed (though he may be cenſured) by the ordinary. *Ibid.* But as he is uſually licenſed by the ordinary before he enter upon his office, it has been held, that he may ſue in the eccleſiaſtical court for his ſalary, or other dues and profits, *Show P. L.* 50.

The perſon choſen to be pariſh clerk muſt be at leaſt 20 years of age; perſons under that age, not being thought of ſufficient ſedateneſs, or diſcretion for the duties of the office. He muſt alſo be able to read and write, and ſhould have a competent knowledge in the practice of pſalmody, that he may be able to join the pariſhioners in that part of their devotion. His qualifications.

The duty of the pariſh clerk is to make reſponſes after the miniſter in the time of divine ſervice; to give out the Pſalms proper for the day; to aſſiſt the officiating miniſter in marrying, baptizing, and burying the pariſhioners, and in all other religious offices and ceremonies of the church (*a*). His duty.

The pariſh clerk is, in general, by no means a perſon corporate; but by a charter granted 17 Hen. 3. to the city of *London*, pariſh clerks in and about that city were incorporated, and authoriſed to make by-laws, and ordinances for their own regulations; and by the ſtatutes of 10 Ann. (for the building of 50 new churches within the bills of (City of London) A perſon corporate.

(*a*) We are told by *Kennet*, that by the conſtitutions of *Alexander*, biſhop of Coventry, in 1237, and by the ſynod of *Cologne*, held in 1280, it was ordained, that pariſh clerks ſhould be appointed ſchoolmaſters in their ſeveral pariſhes and villages to inſtruct the poor children in reading and writing, and in rehearſing the church catechiſm, in order that they might be bred to a ſenſe of chriſtianity and good manners. And we are exceedingly happy to have an opportunity of remarking that this ancient and laudable practice has, in a great meaſure, been reſtored by the benevolent inſtitution of *Sunday Schools*, which by the liberal encouragement they have met with in all parts of the kingdom, promiſe to become an eminent ſource of national proſperity and happineſs.

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mortality) it is provided, that the parish clerks of such new erected churches shall be members of the company or corporation of masters, wardens, assistants, and brethren of the clerks of the several parish churches within the city and suburbs and liberties of London, Westminster, and Southwark, and other the 15 out parishes named in the letters patent of the said corporation, and shall make weekly and yearly accounts of the christenings and burials happening in their several parishes, and shall, in all respects be subject to the rules and orders of the said company.

II. *The Office and Duty of the* SEXTON *of a Parish.*

Sexton.

The sexton is an inferior officer chosen by the parish, to attend upon and assist the churchwardens in their several duties in the care of the church.

His duty.

His business is to keep the church and pews cleanly swept, and sufficiently aired; to make graves, and open the vaults for the burial of the dead; to provide (under the churchwardens' direction) candles, &c. for lighting the church; bread and wine, and other necessaries for the communion, and also water for baptisms; to attend the church during divine service, in order to open the pew doors for the parishioners, keep out dogs, and prevent disturbances, &c.

His salary is paid him by the churchwardens, and his fees settled by the parish vestry.

And it has been held that if he be removed without sufficient cause, a *mandamus* will lie for his restitution. 2 *Leon.* 18.

III. *Concerning the* VESTRY CLERK.

Vestry Clerk.

The clerk of the vestry is chosen by the vestry, during pleasure, as its register, or secretary. *Shaw P. L.* 59.

His business is to attend at all parish meetings; to draw up and copy all orders and other acts of the vestry, and to give copies thereof to the parishioners when required.

He has also the charge and custody of all books and papers belonging or relating to the business of the vestry. *Ibid.*

IV. *Of the* BEADLE *of a Parish.*

Beadle.

The beadle of a parish is an officer appointed by the vestry as their messenger or servant.

His business is to give notice to the parishioners when and where a vestry is appointed by the churchwardens, or overseers; to attend upon it when met, and to execute its orders.

He is also to assist the churchwardens, overseers, and constables, in their respective duties, when commanded, and generally to do and execute all the orders and business of the vestry, and of the parish. *Shaw P. L.* 60.

CHAP. VI.

Of the SETTLEMENT *and* REMOVAL *of the* POOR.

Preliminary observations.

THE plan of the statute of 43 Eliz. for providing for the poor, we have seen to be the relief of the impotent, and them only, and the employment of such as were able to work at their own separate homes, instead of accumulating them together in one common workhouse, a practice, which Sir *W. Blackstone* observes, puts the sober and diligent upon a level, in point of earning, with those who are dissolute and idle; depresses the laudable emulation of domestic industry and neatness, and destroys all endearing family connections, the only felicity of the indigent. 1 *Com.* 361.

The principal defect of this statute seems to have been the confining the poor to small parochial districts, which are frequently incapable of furnishing proper work for the poor, or of providing them an able director. The laborious part of the poor were, however, at that time at liberty to seek employment wherever it was to be had, none being obliged to reside in the places of their settle-

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ment but such as were unable or unwilling to work; and those places of settlement were only such wherein they were born, or which they had made their abode for three years. But after the restoration a very different plan was adopted, which has rendered the employment of the poor more difficult, by authorizing the subdivision of parishes; has greatly increased their number by confining them all to their respective districts; has given birth to the intricacy of the poor laws, by multiplying and rendering more easy the methods of gaining *settlements*; and, in consequence, has created an infinity of expensive law-suits between contending neighbourhoods, concerning those settlements and removals. Thus, by statutes passed in the reign of Car. 2, settlements were declared to be gained by *birth*, by *residence*, by *apprenticeship*, or by *service*; afterwards *notice* of inhabitancy was required; subsequent provisions allowed other circumstances of notoriety to be equivalent to such notice, and those circumstances have, from time to time been altered, enlarged, or restrained, whenever the experience of new inconveniences, arising daily from new regulations, suggested the necessity of a remedy. See 1 *Black. Com.* 361.

The law of settlements may now therefore be reduced to the following general heads:

I. Settlements by birth.

II. By parentage.

III. By marriage.

IV. By apprenticeship.

V. By hiring and service.

VI. By residence with notice.

VII. By estate.

VIII. By serving a public office.

IX. By paying public taxes.

And should any poor person become chargeable to the parish where he resides, without having gained a settlement by either of those means, he will be removable to his own proper parish, by order of two justices: we shall, therefore, when we have sufficiently investigated the above heads, proceed to inquire

X. Concerning removals for want of a settlement.

I. *Concerning Settlement by* Birth.

Place of birth generally the place of settlement.

Wherever a child is born, that is, *prima facie*, the place of its ſettlement, though, as we ſhall ſee hereafter, not *concluſively* ſo; for where the ſettlement of the parent can be diſcovered, the ſame is the ſettlement of the child, who always follows the ſettlement of the parent. *Fol.* 265. *Carth.* 433. and *poſt*, p. 95.

On queſtions reſpecting the ſettlement of a child, it is therefore held that proving the place of its birth is ſufficient to throw the proof of a different place of ſettlement, by parentage or otherwiſe, upon the other party. 2 *Bott* 16. *pl.* 35. *Ibid.* 17. *pl.* 36. 6 *Term Rep.* 653.

The place of birth is alſo generally the ſettlement of a baſtard, or illegitimate child; for a baſtard having (in the conſtruction of law) no viſible father, cannot, like other children, be referred to the father's ſettlement. 3 *Salk.* 66. 4 *Term Rep.* 251.

But though the place of its birth be the ſettlement of a baſtard, it cannot be removed to ſuch place during its infancy (viz. till ſeven years of age) but ſhall continue with the mother at *her* place of ſettlement. 2 *Seſſ. Ca.* 89. But it ſhall nevertheleſs be maintained by the pariſh to which it belongs. 1 *Doug.* 9. *Cald.* 6.

Exceptions.

But this ſettlement of a child may be defeated many ways:

Thus, if the birth be procured in any particular pariſh, by contrivance or fraud: as, where an unmarried woman, being with child, and near the time of her delivery, is conveyed to an adjoining pariſh, and there delivered, the child will belong to the pariſh where the woman previouſly dwelt. *Bulſt.* 349. 3 *Salk.* 66.

Alſo, if a woman be removed by order of removal to another pariſh, and be there delivered during an appeal againſt ſuch order, the child, in caſe ſuch order of removal be quaſhed, will not be ſettled where born, but in the place from whence the mother was removed; for, by the *Court*, "whenever an order is reverſed, all things happening ſubſequent ſhall be void." 2 *Salk.* 474, 532.

And ſo too, if a woman be delivered of an illegitimate child on her way, in paſſing from one pariſh to another, under an order of removal, the child will not be ſettled in the pariſh where it may happen to be born, but in the pariſh to which the woman is removing. 4 *Wil. Juſt.* 177,

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and the like will be the caſe if a woman is delivered after an order of removal be made out, but before ſhe can be ſent to her place of ſettlement. 1 *Seſſ. Ca.* 32. And ſee 35 Geo. 3. *c.* 101.

So, likewiſe, where a baſtard is born in a houſe of correction, or common gaol, the child belongs to the pariſh of the mother, and not to the pariſh where born. 2 *Bulſt.* 358.

And in purſuance of this principle, it is enacted by 13 Geo. 3. *c.* 29, for regulating the foundling hoſpital, that no child received into ſuch hoſpital, ſhall, on that account, gain a ſettlement in the pariſh: and by 13 *ibid. c.* 82, of the ſame king, no baſtard child, born in any lying-in hoſpital, ſhall thereby gain a ſettlement. Likewiſe, by 20 *ibid. c.* 36, it is provided, that baſtard children, born in any houſe of induſtry of any diſtrict incorporated for the relief of the poor, ſhall not therefore be ſettled in the pariſh where ſuch houſe may be ſituated: in all which caſes the child belongs to the pariſh or place of its mother's legal ſettlement.

And ſo, likewiſe, by 17 Geo. 2. *c.* 5, if any woman, wandering and begging, ſhall be delivered of a baſtard child in a place to which ſhe does not belong, and thereby become chargeable, and the churchwardens and overſeers convey her to a juſtice of the peace, the child ſhall not be ſettled where born, but belong to the ſettlement of the mother.

But in all other caſes where a ſingle woman *voluntarily* delivers herſelf in any particular pariſh or place, whether ſhe continue there afterwards or not, the child will be ſettled where *born*. See 1 *Stra.* 476. 2 *Bott. P. L.* 10.

For per *Mansfield*, "when a baſtard is born pending an order, or in gaol, or there is any fraud, theſe are exceptions to the general rule; but in all other caſes the birth decides the ſettlement." *Ibid.*

Baſtards of certificated perſons.

So too, baſtard of a certificated perſon is ſettled in the place of its birth, for it is not ſuch iſſue as will follow the ſettlement of the father or mother, neither is ſuch baſtard the child of either of them within the intent of the ſtat. of 8 and 9 Will. 3, ſo as to be ſent back with the parent. 1 *Stra.* 186. 2 *ibid.* 1168. *Bur. Set. Ca.* 187. 264.

It will be otherwiſe, however, if the certificate expreſly undertake to provide for the child a woman may

be then pregnant with. *Bur. Set. Ca.* 650, 737. And ſo too of perſons having a certificate from a benefit ſociety, under 33 Geo. 3. *c.* 54, as expreſly provided by that ſtat. See more of *certificates*, *poſt*, ſec. 10. SETTLEMENT.

II. *Of Settlement by* Parentage.

Though the place of a child's *birth* is *prima facie* its proper ſettlement, yet this is only where the ſettlement of the parents is, in caſe of legitimate children, *actually* unknown, and in the caſe of baſtards *conſtructively* ſo; for if the ſettlement of the parents be known, the ſame place is the ſettlement of their children, let them be born where they may. 3 *Salk.* 359. *Foley* 269. *Comb.* 380. 6 *Term Rep.* 56.

Thus the child even of a *vagrant* gains no ſettlement in the pariſh where it may happen to be delivered, but belongs to the place where the father was laſt legally ſettled. *Forteſ.* 313, and ſo of ſimilar caſes. See 2 *Salk.* 427. 19 *Vin. Abr.* 382. 1 *Stra.* 580. 2 *Ld. Raym.* 1332. *Comb.* 380. And *ante*, p. 93.

And it has been held, that though a perſon become attainted, yet a ſettlement acquired previous to his attainder will be communicated, and give a ſettlement to his children afterwards born. 6 *Term Rep.* 116.

And if a widow after her huſband's death, marry again to a man ſettled in a different pariſh, her children by the firſt huſband are no part of the ſecond huſband's family, ſo as to gain a ſettlement where he belongs; for though they muſt, for the ſake of nurture during infancy, dwell with him and their mother, yet they are to be ſupported by, and belong to the pariſh of their father. See *Carth.* 449. *Bur. Set. Ca.* 3. 2 *Salk.* 482, 528. 2 *Ld. Raym.* 1473. *Forteſ.* 307. 2 *Bott P. L.* 20. *Gald.* 10. But if his place of ſettlement cannot be diſcovered, they ſhall belong to the place where the *mother* was laſt legally ſettled, previous to her ſecond marriage. *Bur. Set. Ca.* 2.

And in all caſes where the father's ſettlement cannot be found, the children ſhall have the benefit of the mother's, if ſhe have one. *Bur. Set. Ca.* 2, 367, 482. 2 *Bott P. L.* 33, 288.

And it has been held, that the mother's ſettlement ſhall

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not only be that of her own children, but of her grandchildren too, if their reſpective fathers cannot be found. *Bur. Set. Ca.* 482.

Alſo, if a mother acquire a new ſettlement in her own right, after the death of her huſband, this will be the ſettlement of ſuch of her children as had not gained one for themſelves. 2 *Ld. Raym.* 1474. *Bur. Set. Ca.* 49, 64.

But during the life-time of her huſband, a woman cannot gain a ſettlement for her children different from that they derive by parentage from their father. 2 *Seſſ. Ca.* 182. 2 *Bott P. L.* 36.

And *note*, the cohabitation as man and wife for a ſeries of years, is held to be ſuch preſumptive proof of marriage as will entitle the children to a ſettlement. *Bur. Set. Ca.* 508. *Eſp. Ca.* 214.

If the father of a child remove into another pariſh, and there gain a new ſettlement, ſuch of his children as ſhall not have previouſly gained a ſettlement in their own right in the firſt pariſh, ſhall have a ſettlement in the latter; for whilſt children continue a part of their father's family they follow his ſettlement. *Salk.* 528. 2 *Seſſ. Ca.* 150. *Foley* 257.

But if on the removal of the father into another pariſh he leave a child behind, who works for himſelf to procure his own livelihood, ſuch child is to be conſidered as divided from his father's family, and will not derive a new ſettlement from any his father may afterwards gain. 1. *Stra.* 439.

And ſo alſo is a child emancipated from his father's family upon his marriage, or attaining the age of 21 years, and living ſeparately from it. 2 *Stra.* 831. *Bur. Set. Ca.* 270.

And ſo likewiſe, if he enliſt himſelf for a ſoldier, he is emancipated, and not affected by any ſubſequent ſettlement the father may gain. *Bur. Set. Ca.* 638. 5 *Term Rep.* 670.

But even though a child be emancipated from his father's family, by either of thoſe means, yet, unleſs he have gained a ſettlement for himſelf, it has been adjudged that he will legally belong to that of his father: for, per *Mansfield*, Ch. J. the children muſt in all caſes have the ſettlement of the father, till they have gained one for themſelves. *Bur. Set. Ca.* 444. And ſee *ibid.* 806. *Cald.* 284. 2 *Bott P. L.* 54, 78. 3 *Term Rep.* 114, 354. 4 *ibid.* 199.

And therefore the mere circumſtance of a child's attaining the age of 21, &c. is not ſuch an emancipation as to prevent his having a derivative ſettlement from his father, if he ſtill continue to live with ſuch father as a part of his family; but if he once be abſent from his father on ſervice or the like, after attaining ſuch age, although but for a ſhort period, and although he afterwards return to it, yet he will be emancipated. 6 *Term Rep.* 247.

III. *Settlement by* Marriage.

A third mode of gaining a ſettlement is by the marriage of a woman, who immediately becomes ſettled in the pariſh of her huſband; for the law does not permit the ſeparation of huſband and wife. 1 *Stra.* 545. *Bur. Set. Ca.* 367. And during coverture the wife cannot gain any other ſettlement than that of her huſband's. *Bur. Set. Ca.* 412.

But where the huſband has no legal ſettlement, the wife retains that which ſhe had before marriage; for ſhe ought not by her marriage to be put in a worſe condition than ſhe was before. *Fol.* 288. *Bur. Set. Ca.* 368.

And though the marriage be procured by fraud, on purpoſe to gain a ſettlement, yet ſo that it be good in point of form, it makes no difference, and will equally acquire a ſettlement for the wife. 8 *Mod.* 321. 2 *Seſſ. Ca.* 165.

IV. *Of Settlement by* Apprenticeſhip, *and Reſidence.*

By 3 and 4 Will. & Mar. *c.* 11, it is enacted, that if any perſon ſhall be bound an *apprentice* by indenture, and inhabit in any town or pariſh, for the ſpace of forty days, ſuch binding and habitation ſhall be adjudged a good *ſettlement*. But apprentices to *certificated* perſons do not gain a ſettlement under this act; as ſee poſt, p. 98.

And it has been held that the forty days' reſidence required by the ſtatute, need not be ſucceſſive, but that reſidences at different times may be coupled together ſo as to make 40 days in the whole; and in theſe caſes the party is ſettled in that place where he ſlept on the laſt night of his

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ſervice, provided he has reſided there 40 days in the whole. 1 *Term Rep.* 281. 5 *ibid.* 188.

For the habitation intended by the ſtatute, is held to be in that place where the apprentice lodges. See 1 *Stra.* 51, 594. 2 *Ld. Raym.* 1371. 2 *Bott P. L.* 561. *Bur. Set. Ca.* 531, 569.

But a *caſual* reſidence, or ſleeping in a pariſh for the ſpace of 40 days, by reaſon of ſickneſs, or the like, does not confer a ſettlement, *Bur. Set. Ca.* 511, unleſs he be ſent there by his maſter on account of ſuch ill health; for this is with the maſter's conſent, and it is the *reſidence* without reſpect to the *ſervice*, that confers a ſettlement. *Bur. Set. Ca.* 706. 2 *Bott P. L.* 588.

And ſo where an apprentice bound to one maſter, ſerves another with ſuch conſent, he will after 40 days gain a ſettlement in the pariſh where the maſter lives with whom he reſides. 1 *Stra.* 10. 6 *Term Rep.* 452.

And if an apprentice on his maſter's death be aſſigned voluntarily, with the conſent of his maſter's executors, or during his maſter's life time, and with his conſent, put himſelf with another maſter in a different pariſh, a reſidence there for 40 days will gain him a ſettlement; for it being with the executor's conſent, it is taken as a continuation of the original indentures. *Cald.* 60. 1 *Doug.* 70. *Bur. Set. Ca.* 250, 416, 441, 802. 2 *Bott P. L.* 594. 3 *Term Rep.* 605. 6 *ibid.* 452.

Or, if the apprenticeſhip be in any way diſſolved, with the conſent of the apprentice (in order to give which conſent he muſt be of the age of twenty-one years), he may gain a ſettlement in another pariſh by a *freſh* agreement and ſervice. 1 *Term Rep.* 139.

But where the indentures of apprenticeſhip are delivered up, or the apprentice is otherwiſe freed from his indenture, no ſubſequent ſervice or reſidence, with another maſter, will be a ſervice under theſe indentures, ſo as to confer a ſettlement, but that gained by the reſidence of 40 days with the firſt maſter ſhall continue. *Bur. Set. Ca.* 274, 320, 782.

Apprenticeſhip to *certificated* perſons.

And by 12 Anne, ſtat. 1. *c.* 18, to prevent certificated perſons being the means of conferring ſettlements on ſervants and apprentices, which would be a hardſhip on the pariſh, it is enacted, that an apprentice bound by indenture to any perſon who ſhall reſide in any pariſh, townſhip, or place, by *certificate*, and not having afterwards

gained a legal ſettlement there, ſhall not by virtue of ſuch binding gain any ſettlement in ſuch pariſh, townſhip, or place, but ſhall retain his former place of ſettlement before he was ſo bound. SETTLEMENT.

Alſo, by 33 Geo. 3. *c.* 54, ſimilar proviſions are made in reſpect of apprentices to perſons certificated by any *benefit ſociety*.

On which ſtatutes it has been held, that if the maſter of an apprentice receive a certificate before the apprentice has ſerved 40 days under his articles, the ſubſequent ſervice of the apprentice, at the place to which the maſter is certificated, will not operate ſo as to gain him a ſettlement at the pariſh *from whence* his maſter was certificated. *Bur. Set. Ca.* 470.

Nor can an apprentice who is aſſigned by his certificated maſter to another perſon in the ſame pariſh, gain a ſettlement by ſerving ſuch ſecond maſter; for per *Kenyon*, Ch. Juſt. the act of 12 Ann. having expreſly provided, that perſons bound apprentice to certificated men, ſhall not by *virtue thereof* gain a ſettlement in ſuch pariſh, it is neceſſary that the binding ſhould be ſuch as would be capable of conferring a ſettlement under the *original* maſter. 4 *Term Rep.* 371. And where a man and his wife came into a pariſh with a certificate, and the woman die, and the man marry a ſecond wife, and himſelf die, it was held that the certificate extended to this *ſecond* wife; and therefore, that an apprentice taken by her could not gain a ſettlement by his ſervice. 5 *Term Rep.* 266.

V. *Settlement by* Hiring and Service, *with Reſidence.*

By 3 Will. and Mar. *c.* 11, it is enacted, that if any unmarried perſon, not having a child, or children, ſhall be lawfully hired into any pariſh or town for one year, and (by 8 and 9 ſame king, *c.* 30) ſhall continue and abide in the ſame ſervice, during ſuch time, ſuch ſervice ſhall be deemed a good ſettlement therein.

Except, by 9 Geo. 3. *c.* 31, ſervants employed in the *Magdalen Hoſpital*; and by 33 *ibid. c.* 54, thoſe employed in the *Foundling Hoſpital*.

And though the ſervant ſhould *not* continue for a year in ſuch ſervice, yet if the diſcontinuance ariſe from being

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unable to perform his ſervice on account of a derangement of mind, or the like, he ſhall nevertheleſs gain a ſettlement. 5 *Term Rep.* 657. But otherwiſe, if ſuch diſcontinuance be with the mutual conſent of the parties. 6 *ibid.* 464.

But if a ſervant hired for a year, marry before the expiration of the year, and then enter into a *new* contract for ſerving the maſter upon different terms for another year, ſuch ſervice will not gain a ſettlement, he being married at the time of entering into ſuch ſecond ſervice. 5 *Term Rep.* 672.

And ſo, likewiſe, if the ſervant hire himſelf to a new maſter before the expiration of the year, though with the conſent of the old, and though the whole year's wages be paid, he will gain no ſettlement. 6 *ibid.* 185.

Though the ſtatute of Will. and Mary particularly ſpecifies "unmarried perſons not having a child, or children," yet it has been held that a *widower, having children*, may gain a ſettlement by hiring and ſervice, within the meaning of that act, *provided*, however, ſuch children are emancipated from their father's family, and have gained a ſettlement for themſelves; for thoſe children *not being ſuch as can be chargeable*, are not within the *intent* of the ſtatute. *Foley* 131. *Forteſ.* 309.

But it will be otherwiſe if ſuch children have no ſettlement in their own right. 5 *Term Rep.* 478.

And though a perſon marry *after* the hiring, and *before* or *during* his ſervice, it will not prevent his gaining a ſettlement under the ſtatute, ſo that he was unmarried *at* the time of the contract. 2 *Salk.* 527. *Foley* 148. 2 *Set. Ca.* 133. And, per *Kenyon*, Ch. J. whether he marry the day before the ſervice commence, or ſix months afterwards, it makes no difference, the time to be attended to is the *time when the contract was made*, and this has long been conſidered as the rule. 3 *Term Rep.* 382.

And if the hiring be legal, and complete, and without fraud, no unuſual circumſtances, as the hiring to a *parent*, or the like, will take it out of the ſtatute, as ſee *Cald.* 206. *Carth.* 400. *Fol.* 142. *Bur. Set. Ca.* 491. 2 *Bott. P. L.* 326. 3 *Term Rep.* 449. 5 *ibid.* 506.

But the reſiding with a relation, and performing the work of a ſervant, will not be ſufficient to gain a ſettlement, the ſervice not being under a *hiring*. 6 *Term Rep.* 757.

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And, as we have formerly ſeen, a *general* hiring without any particular time agreed upon, is conſtrued to be a hiring for a year, and therefore ſufficient. See *Bur. Set. Ca.* 674, 759, 823. 2 *Term Rep.* 37. 3 *ibid.* 76.

But not a hiring by *the piece*, or as a *weekly labourer*. *Bur. Set. Ca.* 280, 513, 653, 662. 2 *Term Rep.* 453, 622. It is not, however, the *terms* of the hiring, but the *intention*, that is the criterion; for though a ſervant be hired for ſo much *per week*, yet if it be underſtood at the time that he is to continue for the year, if approved of, it is equal to a hiring for the year. 4 *Term Rep.* 245. 5 *ibid.* 193, 216.

Nor in any other caſe where the ſervant is *under the controul of the maſter during the whole time*, which ſeems to have been the diſtinction laid down in the late deciſions. See *Bur. Set. Ca.* 458. 4 *Term Rep.* 219. 5 *ibid.* 21.

But *retroſpective* hiring, viz. when a ſervant after having been ſome time with a perſon, agrees to become his ſervant *from the time he firſt came to him*, is held not to be within the ſtatute to gain a ſettlement by a year's ſervice from ſuch retroſpective period. 1 *Stra.* 143. *Bur. Set. Ca.* 304. 4 *Term Rep.* 257.

And it has been held, that the hiring for a year muſt be at one and the ſame time, and not, for inſtance, two ſeparate hirings for half a year each. 2 *Salk.* 535. 10 *Mod.* 392. *Bur. Set. Ca.* 549. *Cald.* 179.

But the *ſervice* for a year need not be under a *hiring* for a year, nor need the ſervice for forty days (ſee ſec. 4 and 6) be *ſubſequent* to the hiring. 5 *Term Rep.* 98. For the ſervice under an imperfect hiring may be connected with the ſervice under a perfect hiring, if there be no diſcontinuance between them, ſo as to entitle the party to a ſettlement if he reſide forty days upon the whole.

But where there is an abſolute and complete diſcontinuance of the ſervice under one hiring, ſuch ſervice cannot be coupled with a ſervice under a new hiring, ſo as to gain a ſettlement. *Bur. Set. Ca.* 116. 1 *Term Rep.* 778. And in order to couple the ſervices together in this manner, the ſervant muſt remain unmarried at the time of the new hiring. *Cald.* 54, and ſee *ibid.* 298.

It is not neceſſary the ſervice ſhould continue during the year, in the ſame pariſh, for if the maſter remove into different pariſhes with his ſervant, he will acquire a ſettlement in that where he ſerved the laſt forty days. 2 *Bott P. L.* 445, 454. 5 *Term Rep.* 387. And this will

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be the caſe though the maſter be only on a *viſit*. 1 *Stra.* 524. *Foley* 194. Or at a watering-place. *Bur. Set. Ca.* 774. But ſee *ibid.* 418.

And the ſettlement of a ſervant will be in that pariſh where he lodges, though he be hired for and perform his ſervice in another pariſh, for it is the inhabitancy that gains the ſettlement. 8 *Mod.* 369. *Cald.* 51.

But the forty days reſidence of a ſervant need not, it has been held, be ſo many *ſucceſſive* days; if he reſide forty days in the whole, though at ever ſo many different times, it is ſufficient. *Bur. Set. Ca.* 243.

And where he reſides in two or more pariſhes for the ſpace of forty days in the whole, at different times, his ſettlement will be in that where he ſlept the laſt night of ſervice. 2 *Doug.* 657. *Cald.* 288, 290.

Abſence from ſervice.

Abſence from ſervice on account of ſickneſs, or from any fraud in the maſter, to prevent the ſervant gaining a ſettlement in the pariſh, will not be a hindrance; for it would be hard that either the viſitation of God, or the iniquity of the maſter, ſhould be conſtrued to work an injury to the ſervant. 1 *Stra.* 423, 526. 2 *Term Rep.* 624, 627. 4 *ibid.* 600.

But if the ſervant incur a diſſolution of the contract, by committing an offence which cauſes him to be taken into cuſtody, and prevents his completing his ſervice, he will loſe his ſettlement, for ſuch an abſence being by his own default, is equal to a voluntary dereliction. *Cald.* 129, 247. 2 *Bott P. L.* 525.

But if a ſervant be diſcharged by a juſtice *without ſufficient reaſon*, it will not be a diſſolution of the covenant, and therefore not prevent his gaining a ſettlement. 6 *Term Rep.* 583.

In all caſes, however, where the contract between the maſter and ſervant is completely and bona fide diſſolved, it will prevent a ſettlement. 2 *Bott P. L.* 494, 527. *Bur. Set. Ca.* 63, 688. 1 *Term Rep.* 101. 3 *ibid.* 754. 4 *ibid.* 804. 7 *ibid.* 438.

As to the evidence of a hiring and diſſolution of a ſervice, ſee 2 *Bott P. L.* 539. 5 *Term Rep.* 327, 387, 447.

VI. *Of Settlement by* Reſidence *and* Notice.

Settlement by reſidence and notice.

Reſidence in a pariſh for the ſpace of 40 days, attended with ſuch other circumſtances as either have already been, or will be noticed in their proper places, is held

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to gain a legal ſettlement therein; but that a ſettlement might not be gained in a pariſh by indigent perſons, in a ſecret and clandeſtine manner, it was enacted by 13 and 14 *Car.* 2. *c.* 12, that upon complaint made to a juſtice of the peace by the churchwardens and overſeers of any pariſh within forty days after any perſon ſhould come to ſettle in any tenement, under the yearly value of 10*l.* being *likely to become chargeable*, they might be removed to the pariſh where they were laſt legally ſettled, unleſs they gave ſufficient ſecurity for the indemnity of the pariſh; and by 1 Jac. 2. *c.* 17, it was declared that ſuch forty days ſhould be accounted from the time the perſon ſo coming into the pariſh ſhould deliver notice in writing of the houſe of his abode, and the number of his family, to one of the churchwardens, or overſeers of the ſaid pariſh.

But now by 35 Geo. 3. *c.* 101, ſo much of the ſtat. of Car. 2. as enables juſtices to remove perſons *likely to become chargeable*, is repealed; and no perſon ſhall be removeable until he or ſhe become *actually* chargeable.

And it is by the ſame act declared that no perſon ſhall from thenceforth be enabled to gain any ſettlement in any pariſh by delivery and publication of any notice in writing. *See this ſtat. more at large hereafter*, ſec. x.

But the 40 days reſidence which is required to gain a ſettlement under the conſtruction of the ſtat. Car. 2. need not be in the houſe wherein the perſon dwells; therefore, where a perſon dwelt in a houſe *under* 10*l. per annum* in the pariſh, yet holding a windmill, of *above* that value in the ſame pariſh, was held to entitle him to a ſettlement: nor need the 40 days be *ſucceſſive*, for if he reſide 40 days in the pariſh in *the whole*, though at *different times*, it is ſufficient; and if he occupy ſeveral tenements in different pariſhes, and reſide in each of them at different times for above 40 days in the whole, his ſettlement will be in that pariſh where he lodged the laſt night of the firſt 40 days being completed. But the occupation of the tenement muſt be *legal*; for if he gain poſſeſſion thereof by fraud, &c. his reſidence there will not give a ſettlement. *Of which circumſtances ſee more* poſt, *ſec.* vii.

VII. *Of Settlement by* Eſtate, *with Reſidence.*

Renting a tenement of 10*l.* a year.

One of the means of gaining a ſettlement in a pariſh, as *implied* (though not expreſly declared) by the 13 and 14 Car. 2. *c.* 12, is by renting a *tenement* of or above the yearly value of ten pounds, and reſiding therein 40 days.

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The obvious meaning of the word tenement as uſed in this ſtatute, is a houſe or land; but beſides theſe it has been determined, that both a *windmill* and *watermill* are tenements within the intent of the ſtatute, and that therefore renting either of ſuch, with reſidence in the pariſh, will gain a ſettlement. 2 *Salk.* 536. *Bur. Set. Ca.* 107. But not a *poſt windmill*, unattached to the ground. 6 *Term Rep.* 377.

And ſo of a rabbit warren; for, by the *Court*, a mill has been held to be a tenement within the ſtatute; and why not this? It is the ability of the perſon to pay 10*l.* a year that is the foundation of the ſettlement; and whether he pay it for a place of habitation, or a warren which brings an profit, is immaterial. 2 *Stra.* 679, ſee alſo a confirmation of the ſame doctrine, 1 *Term Rep.* 137. 358. 2 *ibid.* 451. 3 *ibid.* 772. 4 *ibid.* 348, 671, where *cattle*, *gates*, *aftermath*, and *fiſheries*, are held to be tenements within the meaning of the ſtatute; and in the laſt cited caſe, it was ſaid by *Kenyon*, Ch. J. that any thing was a *tenement* which was a profit out of land.

And in caſes of this ſort it is the *value* of the tenement, and not the reſerved rent, that is material in order to entitle the tenant to a ſettlement, as ſee in 1 *Stra.* 57, and 1 *Term Rep.* 458, 598.

But the renting of the tenement muſt be real, and not colourable only; for a *fraudulent*, or nominal renting will not gain a ſettlement, of whatever value the premiſes may be. 1 *Term Rep.* 261. 4 *ibid.* 473.

But where a tenement is occupied by copartners, and each of them have an intereſt to the value of 10*l.* per annum, they will all gain a ſettlement by 40 days reſidence, although it be rented in the name of one of them only. 6 *Term Rep.* 554.

Note: In all the above and ſimilar caſes, it is to be underſtood that the tenant muſt *reſide* in the pariſh where the tenement is ſituated for 40 days, otherwiſe no ſettlement will be gained by ſuch renting. See *Bur. Set. Ca.* 54. 2 *Bott P. L.* 210. 2 *Term Rep.* 48.

And in order to gain a ſettlement by reſidence, the party muſt ſtand in the relation of a tenant to the premiſes during the whole of the 40 days; therefore, a woman who reſided 16 days upon ſuch an eſtate during her huſband's life time, and but 33 days after his death as tenant to the landlord, was held not to have gained a ſettlement. 5 *Term Rep.* 664.

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It is to be obſerved that it is not neceſſary in order to gain a ſettlement, that the tenement ſhould be one undivided eſtate of 10*l.* per annum, nor that the whole ſhould lie in the ſame pariſh; for, per *Ld. Kenyon*, diſtinct tenements held under different landlords, and lying in ſeveral pariſhes, may be joined together, and, provided they all together amount to the annual value of 10*l.* they will confer a ſettlement in the pariſh where he has reſided for the ſpace of 40 days laſt paſt. 6 *Term Rep.* 730. 7 *ibid.* 197.

But by 13 Geo. 3. *c.* 84. it is enacted, that no gate-keeper of any turnpike road nor perſon renting the toll thereof, and reſiding in any toll-houſe belonging to the truſtees of the road, ſhall thereby gain a ſettlement in any pariſh.

Having an eſtate of one's own.

But where a perſon comes to live in a pariſh upon his *own eſtate*, however ſmall, he is not within the meaning of the act, and will gain a ſettlement by a reſidence of forty days; and that whether he be entitled to ſuch eſtate by inheritance, limitation, or deviſe, or by operation of law, or as executor or adminiſtrator. See the caſes on this ſubject judiciouſly collected and arranged in 4 *Wil. Juſt.* 437, et ſeq. 5 *ibid.* 136, 264, 265, 266.

VIII. *Of Settlement by* paying public Taxes, *and Reſidence.*

Settlement by paying taxes.

By 3 Will. & Mar. *c.* 11, if any perſon coming to inhabit in any town or pariſh, ſhall, for himſelf, and on his own account, be charged with and pay his ſhare towards the public taxes or levies of ſuch town or pariſh, he ſhall be deemed to have a legal ſettlement therein, and that *without* any notice in writing of ſuch inhabitancy. This act, however, does not extend to *certificated* perſons, ſee 9 and 10 Will. 3. *c.* 11, and 33 Geo. 3. *c.* 54. Nor to perſons paying only the *houſe and window duty*. 21 Geo. 2. *c.* 10. 18 Geo. *c.* 26. Nor to perſons paying rates without being reſident. 6 *Term Rep.* 536.

And now by 35 Geo. 3. *c.* 101, the tenements for which the perſon ſhall pay his ſhare of ſuch rates, &c. ſhall be of the yearly value of 10*l.* at the leaſt.

On the ſtatute of Will. and Mary it has been held that

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the *land tax*, though not a *parochial* is a *public* tax, within the meaning of the legiſlature. *Comb.* 410. *Cald.* 24. And though it is to be allowed the tenant again by his landlord, it makes no difference. *Bur. Set. Ca.* 415, 488, 522.

And in a caſe where the rate was paid by a friend of the tenant's in order to ſave his goods from diſtreſs, it was adjudged to be a ſufficient payment to entitle him to a ſettlement. 3 *Term Rep.* 550.

But where the tax is properly the landlord's, and the landlord is rated for it, it will not entitle the tenant to a ſettlement. 1 *Term Rep.* 240. 2 *ibid.* 628. 3 *ibid.* 505.

And in order to entitle the party to a ſettlement by paying rates, it has been determined that his name muſt be in the rate at the time it is paid, for if it be not inſerted till after payment, it will not be ſufficient, it being no rate till his name be inſerted. *Bur. Set Ca.* 787. 6 *Term Rep.* 540.

IX. *Of Settlement by* ſerving a Pariſh Office.

Settlement by ſerving pariſh offices.

By 3 Will. and Mary, *c.* 11, it is enacted, that if any perſon coming into a pariſh ſhall, for himſelf and on his own account, execute any annual office or charge in the ſaid town or pariſh during one whole year, he ſhall be deemed to have a legal ſettlement therein.

And though he execute the office to which he may be appointed, by *deputy*, it is ſufficient. *Cald.* 252.

Upon queſtions which have ariſen in reſpect of what ſhall be deemed an office or charge within the ſtatute, it has been determined that the office of tything-man, 1 *Stra.* 544, (but this muſt be the principal, and not the deputy tything-man, *Bur. Set. Ca.* 634.) borſholder, *Bur. Set. Ca.* 223; warden for a borough, 10 *Mod.* 13; pariſh clerk (even though not licenſed by the ordinary, 2 *Stra.* 942), 2 *Salk.* 536; ſexton, 3 *Term Rep.* 118; bailiff or aleconner, *Bur. Set. Ca.* 365; hog-ringer, (if an annual office for the whole pariſh) 4 *Term Rep.* 807; collector of land tax, or other parliamentary duties, 2 *Bott P. L.* 283. 1 *Stra.* 411, will either of them gain a ſettlement in the pariſh for which they are ſerved.

Where no ſettlement.

Note: If the ſettlement of a pauper in any particular pariſh, by either of the means we have enumerated, can-

not be aſcertained or diſcovered, he muſt be ſupported by that in which he may happen to become chargeable. 2 *Salk.* 485. *Comberb.* 287.

Thus, a child left and deſerted by its parents, was held to be maintainable where found. 2 *Salk.* 485.

And ſo foreigners and their children, if they have gained no place of ſettlement, and are unable to get a living, muſt be ſupported by the pariſh where they happen to become chargeable. *Comb.* 287.

X. *Of the* Removal of the Poor, *and of* Certificates.

Removal of the poor.

If any poor perſon reſident or ſojourning in any pariſh wherein he has not, by either of the means we have already noticed, gained a legal ſettlement, ſhall become impotent and unable to get a livelihood for himſelf and family, he is removeable to the pariſh or place to which he belongs; for which purpoſe

By 13 and 14 Car. 2. *c.* 12, it is enacted, that it ſhall be lawful, on complaint made by the churchwardens and overſeers of the poor of any pariſh, to any juſtice of the peace, within 40 days after any perſon ſhall come to ſettle in any tenement under the yearly value of 10*l.* for any two juſtices (one of the *quorum*) of the diviſion where any perſon who is *likely to become chargeable to the pariſh*, ſhall inhabit, (unleſs perſons renting the tolls, and mariners, ſoldiers, and their wives exerciſing trade) to remove ſuch perſon to the pariſh where he was laſt legally ſettled for the ſpace of 40 days, unleſs he give ſufficient ſecurity for the diſcharge of the ſaid pariſh, to be allowed of by the ſaid juſtices. But by 35 Geo. 3. *c.* 101, ſo much of the ſaid act as authorizes the juſtices to remove any perſon *likely to become chargeable*, is repealed; and it is by ſuch laſt mentioned ſtatute declared, that from thenceforth no poor perſon ſhall be removed in manner aforeſaid until ſuch perſon ſhall *have become actually chargeable* to the pariſh or place in which he ſhall inhabit.

Juſtices may ſuſpend the removal of ſick perſons.

It is alſo further humanely provided by the ſame act, that in caſe any poor perſon ſhall from thenceforth be brought before any juſtice or juſtices of the peace, for the purpoſe of being removed from the place where he or ſhe is inhabiting or ſojourning, by virtue of an order of

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removal, or of being paſſed by virtue of any vagrant paſs, and it ſhall appear to the ſaid juſtice or juſtices that ſuch poor perſon is unable to travel, by reaſon of ſickneſs or other infirmity, or that it would be dangerous for him or her ſo to do, the juſtice or juſtices making ſuch order of removal, or granting ſuch vagrant paſs, are required and authorized to ſuſpend the execution of the ſame until they are ſatisfied that it may ſafely be executed, without danger to any perſon who is the ſubject thereof; which ſuſpenſion of, and ſubſequent permiſſion to execute the ſame, ſhall be reſpectively indorſed on the ſaid order of removal or vagrant paſs, and ſigned by ſuch juſtice or juſtices: and no act done by any ſuch poor perſon continuing to reſide in any pariſh, townſhip, or place, under the ſuſpenſion of any ſuch order, ſhall be effectual, either in the whole or in part, for the purpoſe of giving him or her a ſettlement in the ſame.

Charges incurred by ſuch ſuſpenſion to be paid by the officers of the pariſh to which they are ordered to be removed.

And the charges proved upon oath to have been incurred by ſuch ſuſpenſion of any order of removal may, by the ſaid juſtices, be directed to be paid by the churchwardens and overſeers of the pariſh or place to which ſuch poor perſon is ordered to be removed, in caſe any removal ſhall take place, or in caſe of the death of ſuch poor perſon before the execution of ſuch order; and if the churchwardens or overſeers of the pariſh, townſhip, or place, to which the order of removal ſhall be made, or any or either of them, ſhall, upon the removal or death of ſuch poor perſon ordered to be removed, refuſe or neglect to pay the ſaid charges within three days after demand thereof, and ſhall not within the ſame time give notice of appeal as is herein-after mentioned, it ſhall and may be lawful for one juſtice of the peace, by warrant under his hand and ſeal, to cauſe the money mentioned in ſuch order to be levied by diſtreſs and ſale of the goods and chattels of the perſon or perſons ſo refuſing or neglecting payment of the ſame, and alſo ſuch coſts attending the ſame, not exceeding forty ſhillings, as ſuch juſtice ſhall direct; and if the pariſh, townſhip, or place, to which the removal of ſuch poor perſon is made, or was ordered to be made, before the death of ſuch perſon as aforeſaid, be without the juriſdiction of the juſtice of the peace iſſuing the warrant, then ſuch warrant ſhall be tranſmitted to any juſtice of the peace having juriſdiction within ſuch pariſh, townſhip, or place as aforeſaid, who

upon receipt thereof is hereby authorized and required to indorſe the ſame for execution.

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Provided nevertheleſs, that if the ſum ſo ordered to be paid on account of ſuch coſts and charges exceed the ſum of twenty pounds, the party or parties aggrieved by ſuch order may appeal to the next general quarter ſeſſions againſt the ſame, as they may do againſt an order for the removal of poor perſons by any law now in being; and if the court of quarter ſeſſions ſhall be of opinion that the ſum ſo awarded be more than of right ought to have been directed to be paid, ſuch court is directed to ſtrike out the ſum contained in the ſaid order, and inſert the ſum which in the judgment of ſuch court ought to be paid; and in every ſuch caſe the ſaid court of quarter ſeſſions ſhall direct that the ſaid order ſo amended ſhall be carried into execution by the ſaid juſtices by whom the order was originally made, or either of them, or in caſe of the death of either of them, by ſuch other juſtice or juſtices as the ſaid court ſhall direct.

If coſts exceed 20l. appeal may be made to the quarter ſeſſions.

Provided alſo, that nothing in the ſaid act contained ſhall extend to alter or abridge the power of juſtices of the peace to paſs or puniſh vagrants in the manner and under the circumſtances ſet forth in 17 Geo. 2. *c.* 5, (except ſo far as regards the power of ſuſpending the vagrant paſs, in the manner and for the cauſes before mentioned).

The act not to alter the power of juſtices to paſs or puniſh vagrants by 17 Geo. 2. *c.* 5. except as to ſuſpenſion.

Every perſon who ſhall have been convicted of larceny, or any other felony, or who by the laws now in being, ſhall be deemed a rogue, vagabond, idle, or diſorderly perſon; or who ſhall appear to any two or more juſtices of the peace of the diviſion wherein ſuch perſon ſhall reſide, upon the oath of one or more credible witneſs or witneſſes, to be a perſon of evil fame, or a reputed thief, ſuch perſon not being able to give a ſatisfactory account of himſelf or herſelf, or of his or her way of living, ſhall be conſidered as a perſon actually chargeable within the true intent and meaning of the ſaid act, to the pariſh in which ſuch perſon ſhall reſide; and ſhall be liable to be removed to the pariſh of his or her laſt legal ſettlement, by the order of the ſaid juſtices of the peace, (whereof one to be of the quorum) of the diviſion where any ſuch perſon ſhall reſide.

Rogues, &c. to be conſidered as chargeable, and may be removed.

Every unmarried woman with child ſhall be deemed and taken to be a perſon actually chargeable, within the true intent and meaning of this act, to the pariſh, town-

Unmarried women with child to be deemed chargeable,

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ſhip, or place in which ſhe ſhall inhabit, and may be removed as ſuch to the place of her laſt legal ſettlement.

Baſtards to be deemed of the mother's pariſh.

And in caſe any order of removal obtained for ſuch purpoſe ſhall be ſuſpended for any of the reaſons before mentioned, and during ſuch ſuſpenſion the ſaid woman ſhall be delivered of any child, which by the laws of this kingdom ſhall be a baſtard, every ſuch baſtard child ſhall be deemed and taken to be ſettled in the ſame pariſh, townſhip, or place, which was the legal ſettlement of the mother at the time of her delivery.

Former acts touching baſtards, &c. to remain in force.

Provided, nevertheleſs, that all acts theretofore made, touching baſtard children, or concerning the mothers or reputed fathers of ſuch children, ſhall be, and remain in full force and effect after the paſſing of the ſaid act, as well in caſes where by the ſaid act the place of ſettlement of ſuch baſtard children is directed to be the ſame as that of the mothers of ſuch children, as in caſes where the place of ſuch baſtard children remains the ſame as it did before the paſſing thereof.

And by 3 Will. & Mar. *c.* 11, the churchwardens and overſeers ſhall receive perſons ſo removed to them on pain of forfeiting 5*l.* each, to be levied by diſtreſs, for the benefit of the poor of the pariſh from which the perſon was removed. And by 17 Geo. 2. *c.* 5, churchwardens and overſeers refuſing to receive ſuch perſons, and to provide work for them as for other inhabitants, may be indicted. See 1 *Bott P. L.* 300.

Alſo by the laſt mentioned act, perſons unlawfully returning to the pariſh from whence they have been removed, without a certificate from the pariſh or place to which they belong, ſhall be deemed idle and diſorderly perſons, and dealt with accordingly.

Of Certificates *of Settlement.*

Certificates of inhabitancy and ſettlement.

By 8 and 9 Will. 3. *c.* 30, it is enacted, that notwithſtanding ſo much of the ſtatute of Car. 2. as authorizes two juſtices of the peace to remove perſons coming into another pariſh, unleſs they give ſecurity not to be chargeable to ſuch pariſh, it ſhall be lawful for any perſon to go into any county, pariſh, or place to work in time of harveſt, or at any other time to work at any other work, and *there to reſide*, if ſuch perſon ſhall, at the ſame time

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procure, bring, and deliver to the churchwardens or overſeers of the pariſh or place, where he ſhall come to inhabit, or to any of them, a *certificate* (*a*) under the hands and ſeals of the churchwardens and overſeers of any other pariſh, townſhip, or place, or the major part of them (or under the hands and ſeals of the overſeers, where there are no churchwardens) to be atteſted by two or more credible witneſſes, thereby owning and acknowledging the perſon mentioned in the ſaid certificate to be an inhabitant legally ſettled in that pariſh, townſhip or place, and every ſuch certificate having been allowed of and ſubſcribed by two juſtices of the county or liberty, from whence the ſame ſhall come, ſhall oblige the ſaid pariſh or place to receive and provide for the perſon mentioned in the ſaid certificate, together with his or her family, as inhabitants of that pariſh; and if at any time they ſhall happen to become chargeable, or be forced to aſk relief of the pariſh or place to which they ſhall have ſo come, it ſhall *then*, and not before, be lawful for ſuch perſon, and his or her children (though born in that pariſh, and not having otherwiſe acquired a legal ſettlement there, to be removed, conveyed, and ſettled in the pariſh, townſhip, or place from whence ſuch certificate was brought.

Benefit ſocieties

Alſo by 33 Geo. 3. *c.* 54, (authorizing perſons to form themſelves into ſocieties for the purpoſe of raiſing a ſupply for the mutual relief of its members in old age, &c.) it is provided, that no member of any ſuch ſociety coming to reſide in any pariſh with a *certificate* from the ſtewards, preſidents, wardens, or treaſurers thereof, or two of them, atteſted by one witneſs, acknowledging the perſon to be a member of the ſaid ſociety, ſhall, *during the time he ſhall be a member thereof*, be removeable to his own proper pariſh *until* he ſhall become actually chargeable, or forced to aſk relief of the pariſh to which he ſhall have ſo come.

Caſes on the ſtatutes.

Upon the above ſtatutes of Car. 2. and Will. and Mar. it has been determined, that it is entirely *diſcretionary* in the churchwardens, &c. to grant certificates, and that they cannot be in any wiſe compelled to do it. 2 *Seſſ. Ca.* 128.

That a certificate when granted, will not have the effect of annulling a ſettlement previouſly gained. 2 *Salk.* 530.

(*a*) See the form of this certificate, "*Appendix*."

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And that a certificate is binding and concluſive on the pariſh certifying, only in reſpect of the particular pariſh to which it is directed, and not as to *other* pariſhes. *Ibid.* 531. 4 *Term Rep.* 251.

Nor is a certificate transferrable from one pariſh to another, but muſt be directed to one pariſh in particular, for if it were to extend further it would operate as a licence for vagrants. 6 *Term Rep.* 552.

And though ſeveral pariſhes are incorporated by act of parliament for the purpoſe of maintaining their poor, yet as between themſelves and ſtrangers each pariſh is conſidered as diſtinct and ſeparate, and the removal of a pauper muſt therefore be to the particular pariſh in which he may have gained a ſettlement, 6 *Term Rep.* 536; therefore a perſon who comes into *one* of ſuch conſolidated pariſhes under a certificate, is not thereby precluded from gaining a ſettlement in any *other* of ſuch pariſhes. *Ibid.* 552.

Certificates, generally ſpeaking, granted to the head of a family, extend to all the members of that family, but it is competent to the parties granting it to narrow its extent, and limit its application to particular parts of the family only, 7 *Term Rep.* 133; and even though the certificate be general, and include *all* the perſon's children, yet it will not extend to *illegitimate* children, unleſs expreſly named. *Ibid.* 362.

And not only the perſons who are mentioned in the certificate, but all other legitimate children born afterwards, or wife afterwards married, are included in its effects. *Bur. Set. Ca.* 182, 259. 5 *Term Rep.* 266.

But it does not extend to the grand-children of the perſon certificated. 4 *Ibid.* 797.

Nor to children emancipated from their father's family. 5 *Ibid.* 583, unleſs ſuch emancipated child is particularly mentioned by name in the certificate, in which caſe he is included in the certificate, though he afterwards marry and live apart from his father's family. *Ibid.* 258.

But a certificate is diſcharged by the perſon's gaining a new ſettlement in another pariſh, or by his being removed, or returning to the pariſh certifying, or from the pariſh to which he was certified, if it appear that he thereby intended to abandon his certificate. The Courts, however, will not preſume a certificate to be diſcharged unleſs it be clearly proved ſo to be.

CHAP. VII.

Of the HIGHWAYS *and* PUBLIC ROADS *of a* PARISH.

Preliminary observations.

THE laws relating to *Highways*, *Turnpikes*, and *Public Roads* in general, are fully compriſed in that diviſion of our "LAW SELECTIONS" which expreſly purports to treat upon theſe ſubjects, and to which we beg leave to refer ſuch of our readers as would wiſh for more particular information reſpecting thoſe important heads, than is to be found in the preſent chapter, which is purpoſely confined to ſuch matters only as immediately concern the *pariſh body*; theſe we ſhall divide into the following heads:

I. Of the meeting of pariſhioners, in order to the appointment of a ſurveyor of the highways.

II. Of the repairs of highways in general; perſons liable to perform ſtatute duty thereon; the time and manner of performing the ſame.

III. Of compounding in lieu of ſtatute duty.

IV. Of aſſeſſments for defraying extraordinary expences attending the repairs of highways.

I. *Of the Meeting of Pariſhioners, in order to the Appointment of a Surveyor of the Highways.*

Inhabitants to meet and make out a liſt of perſons fit for the office of ſurveyor.

By 13 Geo. 3. *c.* 78. the conſtables, headboroughs, tythingmen, churchwardens, ſurveyor of the highways, and houſeholders aſſeſſed to any public or parochial rate, ſhall, on penalty of 40s. each, aſſemble together, at 11 o'clock in the forenoon upon the 22nd of September in every year, at the pariſh church, or chapel, or other uſual place of public meeting; and the major part of the perſons ſo aſſembled ſhall make out a liſt of the names of 10 pariſhioners, who have each an eſtate in lands, tenements, or hereditaments in his own right, or right of his wife, within ſuch pariſh, or place, of the yearly value of 10l. or who is poſſeſſed of perſonal property to the amount of 100l. or is an occupier of a houſe, or tenement, or land, of the yearly value of 30l: and if there be not 10 ſuch perſons, then he number ſhall be made up of other the moſt ſufficient

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inhabitants; ſuch liſt to be tranſmitted by the conſtable, headborough, or tythingman, to the juſtices, (as directed *ante*, p. 80.) who ſhall appoint one or more of the perſons contained in ſuch liſt, if duly qualified, (which is to be left to their opinion and diſcretion) and if not, ſome other ſubſtantial inhabitants, to be ſurveyors of the highways.

Surveyor to be appointed by the juſtices.

Penalty on refuſing to accept the office.

And if either of the perſons contained in the aforeſaid liſt ſhall neglect to appear before the juſtices at the ſeſſions, to accept the ſaid office, or within 6 days after being ſerved with notice of his appointment, ſignify his acceptance thereof to one of the ſaid juſtices, he ſhall forfeit 5l. and if he be not one of the perſons contained in the ſaid liſt, he ſhall forfeit 50s. but no perſons who ſhall have ſerved for any one year ſhall be liable to ſerve again within 3 years.

Inhabitants may of themſelves nominate a perſon to be ſurveyor.

And further, two parts out of three of the perſons aſſembled as aforeſaid, may themſeves agree to make choice of a particular perſon, and return him with the ſaid liſt of 10 perſons, and alſo fix a ſalary for his trouble, in which caſe the juſtices are authorized to appoint ſuch perſon with the ſalary ſo agreed upon.

Pariſh may require ſurveyor to give bond.

And the churchwarden, overſeer, or other principal inhabitant may, at the time of the ſurveyor being ſo appointed, or within 14 days thereafter, require him, (if he do not reſide within the pariſh,) to give bond with ſurety, to ſome pariſhioner to be named by the juſtices, duly to account for the monies which may come to his hands.

Death of ſurveyor.

But if ſuch ſurveyor ſhall die, or be incapable to execute his office, the juſtices at a ſpecial ſeſſions are to appoint another till the next Michaelmas general ſeſſions, without (as it ſhould ſeem) any interference of the inhabitants.

II. *Of the Repair of Roads in general; the Perſons liable to work or perform Statute Duty therein, and the Time and Mode of performing the ſame.*

Pariſhes bound to repair their roads.

By the common law of the land, the highways, and public roads, within or leading through any pariſh, or diſtrict, are to be repaired by the occupiers of lands or tenements therein. This being the caſe, the pariſh is always conſidered as liable to keep its roads and highways in repair, unleſs it can, by reaſon of ſome preſcription, parliamentary, or other exemption, prove ſuch repairs to belong to ſome other perſon, or body. See *Bur. Rep.* 2511, 2702. 2 *Term Rep.* 106, 111.

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The repairs of the highways, therefore, lying upon the parishioners, we shall proceed to inquire by what means such repairs are to be performed.

Who liable to perform statute duty.

By the beforementioned statute 13 Geo. 3. *c.* 78, as amended by 34 *ibid. c.* 74, the surveyor, together with the inhabitants and occupiers of lands, tenements, woods, tythes, and hereditaments, within every parish, shall, at proper seasons in the year, assist in repairing the highways, &c. therein, and shall be chargeable thereunto as follows: viz.

Rate, and manner of performing it.

Every person occupying land, &c. in any parish, of the yearly value of 50l. and keeping a *waggon*, *cart*, *wain*, *plough*, or *tumbril*, and *three or more horses*, or beasts of draught, shall, on 4 days notice given by the surveyor, be liable to perform statute duty therein in the repair of the roads, and shall, if required by the surveyor, six days in every year, between *Michaelmas* and *Michaelmas*, send one wain, cart, or carriage, with horses, oxen, or other cattle, (according to the custom of the country) and two able men therewith.

And every such person occupying lands, &c. in the parish where he resides, of the yearly value of 50l. beyond the said first 50l. and every person occupying lands, &c. in any other parish of the yearly value of 50l. and every other person not keeping a team, draught, or plough, but occupying lands &c. of the yearly value of 50l. in any parish, shall in like manner find one wain, cart, or carriage, with not less than 3 horses, or 1 horse and 4 oxen, or 2 horses and 2 oxen, and two able men therewith; and so for every 50l. per annum, which he shall so further occupy in such parish.

Every person not keeping any team, &c. but occupying lands, &c. under the yearly value of 50l. in any parish, or keeping such team, &c. and occupying lands of the said annual value in any other parish than that in which he resides, shall pay to the surveyors in lieu of the aforesaid duty the sums following, viz. 1d. per day in lieu of every day's statute duty that shall be required of him (not exceeding 6 days) for every 20s. of the annual value of such lands, and so of lands above the annual value of 50l. and under 100l. and the like sum of 1d. for every 20s. that each progressive and intermediate annual value of 20s. of the lands, &c. which he shall so occupy shall fall short of the further increase of 50l. in every parish where such lands lie.

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But no perſon keeping ſuch team, &c. and performing duty therewith, in the pariſh where he reſides, and not occupying lands, &c. within the ſame of the yearly value of 30l. ſhall be obliged to ſend more than one labourer with the ſame; and perſons not keeping a team, &c. but one or two horſes or beaſts of draught, uſed only to draw in ſuch carts upon the highways, ſhall perform his ſtatute duty for the like number of days with ſuch carts, &c. with one labourer attending each, or pay for the lands he may occupy after the rate aforeſaid, at the option of the ſurveyor.

Perſons not keeping a team, &c.

Perſons keeping carriages.

And every perſon keeping a coach, poſt-chaiſe, chair, or other wheel carriage, and not keeping a team, &c. nor occupying lands, &c. of the annual value of 50l. where he ſhall reſide, ſhall pay to the ſurveyor 1s. in lieu of each day's ſtatute duty for every horſe he ſhall uſe in ſuch carriage, or ſhall pay according to the value of any lands, &c. which he may occupy according to the rate aforeſaid, at the option of the ſurveyor; and if any team, &c. of an inhabitant be unneedful, the ſurveyor may require in lieu thereof either 3 able men, or 4s. and 6d. in money on notice given to that effect, and the men ſo ſent ſhall be provided by the perſon ſending them, with all proper tools for their work.

Time of performing ſtatute duty.

And the ſaid labourers, horſes, &c. employed in purſuance of the ſaid act ſhall work diligently for 8 hours each day on the penalties of incurring to the maſter or other, the like forfeitures as if ſuch team, &c. had not been ſent.

Penalty on default.

And perſons making default in ſending ſuch carts, &c. ſhall forfeit ſuch pecuniary penalties from 10s. to 1s. and 6d. per diem, as in the ſaid act are ſet forth.

Inhabitants may ſet apart three months in the year.

Provided, nevertheleſs, that the inhabitants at a veſtry, or public meeting, to be held for that purpoſe, may ſet apart three months in every year, within which no ſtatute duty ſhall be performed, viz. one month in the *ſpring* of the year for the ſeed month; one month in the *ſummer* ſeaſon for the hay harveſt, and one month in the *autumn* for the corn harveſt; notice (*b*) of which ſhall be given to the ſurveyor of the highways, and alſo to the ſurveyor

(*b*) Public notice of holding a meeting for this and other purpoſes under the above act, is thereby directed

of the turnpike roads, if any, in each parish, 3 days after such meeting, and 14 days before the commencement of each month so set apart.

III. *Of Composition in lieu of Duty.*

Persons may compound for statute duty.

By the aforesaid acts it is moreover provided, that any person liable to perform the duty beforementioned, may compound for the same if he think fit, (for which purpose the surveyor is directed to give public notice where and when the inhabitants may signify their intention to compound) for any sum, at the discretion of the justices at their sessions, to be held in the first week after Michaelmas quarter sessions, not, however, exceeding 6s. nor less than 3s. per day for each team, draught, or plough, and in default of their adjudging the same, then 4s. 6d. per day for each team, &c. 2s. for each cart with one horse or beast of draught, and 3s. for each cart with 2 horses or beasts of draught.

Indigent persons.

Indigent persons, however, may be exempted from rates for composition at the discretion of any two justices.

Justices may refuse their assent to composition.

But justices may refuse to accept of composition if they see cause, and order the team, duty, &c. to be performed in kind, except in respect of the teams, &c. of persons not occupying land in the parish of the annual value of 30l.

Labourers compellable to work, &c.

And labouring persons are compellable to perform 6 days labour by themselves or others upon being paid the usual price of labour in the said parish.

Appeal.

Parishes aggrieved by any order of justices in respect of the above act, may by order of vestry, called for that purpose, appeal to the quarter sessions next after the order of the justices shall have been filed with the clerk of the peace, and not otherwise.

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to be given at the church or chapel, or other public place, on the Sunday next preceding, which shall be 3 days at the least before the same is held; such meeting, and also notice thereof in writing, specifying the purpose for which it is to be held, shall at the same time be fixed upon the door of such church or chapel, in or at such other public place. *See the form of such notice*, APPENDIX.

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IV. *Of Aſſeſſments for defraying extraordimary Expences attending the Repairs of Highways.*

Inhabitants may be aſſeſſed for extraordinary charges.

By the ſame act of 13 Geo. 3. *c.* 78, the juſtices at their ſpecial ſeſſions are empowered (upon application made by the ſurveyor) to cauſe an equal aſſeſſment to be made upon all occupiers of lands, &c. in the pariſh, for the buying materials, making ſatisfaction for damages, erecting guide-poſts, making or repairing trunks, tunnels, plats, bridges, or arches, and for paying the ſurveyors' ſalary, not exceeding in any caſe 9d. in the pound.

Penalty on default.

And if any perſon refuſe or neglect to pay the ſame within 10 days after demand, the ſame may be levied by diſtreſs and ſale of goods under warrant of a juſtice; and if there be no diſtreſs, he may be committed to the common gaol till the ſame be paid with coſts.

CHAP. VIII.

Concerning WEIGHTS *and* MEASURES.

THE ſubject of *Weights and Meaſures* is a matter which, by the indulgence of the legiſlature, is allowed to be in a great degree under the regulation of the pariſh body: for

By 35 Geo. 3. *c.* 102, as altered by 37 *ibid. c.* 143. (empowering juſtices of the peace to appoint perſons to examine weights and meaſures within their reſpective diſtricts,) it is provided, that it ſhall be lawful for the majority of the inhabitants of any pariſh, townſhip, or place, at a veſtry to be holden for that purpoſe, to nominate one or more ſubſtantial houſeholders, to be approved of by the juſtices at their petty ſeſſions, for examining ſuch weights and meaſures within ſuch pariſh, townſhip, or place, provided that ſuch pariſh, &c. ſhall firſt have procured proper ſtandard weights and meaſures, according to the ſtandards thereof reſpectively kept in his majeſty's Exchequer at Weſtminſter, for the uſe of the ſaid pariſh, townſhip, or place, to be depoſited with ſuch examiner ſo to be choſen and approved as aforeſaid; and the ſaid juſtices may order the coſts thereof, as well as a ſatisfaction, to be allowed to ſuch examiner for his trouble, to be paid out of the rates made for the relief of the poor.

APPENDIX
OF PRECEDENTS.

1. *The Form of an Indenture for binding out a Pariſh Apprentice* (*a*).

THIS INDENTURE made the firſt day of January, in the year of our Lord one thouſand ſeven hundred and ninety-nine, BETWEEN *Babel Adams* and *Daniel Campbell*, churchwardens, and *Francis Ellwood* and *Henry Gregory*, overſeers of the poor, of the pariſh of *Enfield*, in the county of *Middleſex*, of the one part, and *Nicholas Moore*, of the ſame place, taylor, of the other part, WITNESSETH, that the ſaid churchwardens and overſeers of the poor, by and with the conſent of *Andrew Sibley* and *Michael Foreſter*, two of his majeſty's juſtices of the peace for the ſaid county, dwelling in (or *near to* as the caſe may be) the ſaid pariſh, one whereof is of the *quorum*, have put, placed, and bound, and by theſe preſents do put, place, and bind *Thomas Lackit*, a poor boy, whoſe parents *John* and *Sarah Lackit* are not able to maintain him, of the age of fourteen years, to be an apprentice with him the ſaid *Nicholas Moore*, and as an apprentice with him the ſaid *Nicholas Moore* to dwell, from the day of the date of theſe preſents, until the ſaid *Thomas Lackit* ſhall come to the age of twenty-one years (or if it be a girl, add "or the time of her marriage, which ſhall firſt happen") according to the ſtatutes in ſuch caſe made and provided; for and during all which time and term the ſaid *Thomas Lackit* ſhall the ſaid *Nicholas Moore*, his ſaid maſter, well and faithfully ſerve in all ſuch lawful buſineſs, as the ſaid *Thomas Lackit* ſhall be put unto by the command of his ſaid maſter, according to the beſt and utmoſt of the power, wit, and ability of him the ſaid *Thomas Lackit*, and honeſtly and obediently in all things ſhall behave and demean himſelf towards his ſaid maſter, and honeſtly, reverently, and orderly

(*a*) Theſe indentures, ready engroſſed, and impreſſed with the proper ſtamp, may be had of moſt of the ſtamp diſtributors, or writing ſtationers.

APPENDIX.

towards the reſt of the family of his ſaid maſter. And the ſaid *Nicholas Moore* on his part, for himſelf, his executors and adminiſtrators, doth hereby covenant, promiſe, and agree to, and with the ſaid churchwardens and overſeers of the poor, and every of them, their and every of their executors and adminiſtrators, and their and every of their ſucceſſors for the time being, and to and with the ſaid *Thomas Lackit*, that he the ſaid *Nicholas Moore*, ſhall and will the ſaid *Thomas Lackit*, in the craft, myſtery, and occupation of a taylor, which he the ſaid *Nicholas Moore* now uſeth, after the beſt manner that he can or may, teach, inſtruct, and inform, or cauſe and procure to be taught, inſtructed, and informed, as much as thereunto belongeth, or in any wiſe appertaineth; and that the ſaid *Nicholas Moore* ſhall and will alſo find, provide, and allow unto the ſaid apprentice, good and ſufficient meat, drink, apparel, waſhing, lodging, and all other things neceſſary or fit for ſuch an apprentice during all the term aforeſaid. PROVIDED ALWAYS (*a*), that the ſaid laſt-mentioned covenant on the part of the ſaid *Nicholas Moore*, his executors and adminiſtrators to be done and performed, ſhall continue and be in force, for no longer time than three calendar months next after the death of the ſaid *Nicholas Moore*, in caſe the ſaid *Nicholas Moore* ſhall happen to die during the continuance of ſuch apprenticeſhip, according to the proviſions of an act paſſed in the thirty-ſecond year of the reign of king *George* the Third, intituled An Act for the further regulation of Pariſh Apprentices. IN WITNESS whereof the ſaid parties have hereunto ſet their hands and ſeals the day and year firſt above written.

Sealed and delivered in the preſence of us,
Abr. Finley,
Peter Sams.

Babel Adams (Seal.)
Dan. Campbell (Seal.)
Fran. Ellwood (Seal.)
Hen. Gregory (Seal.)
Nicholas Moore (Seal.)

To this indenture the juſtices muſt annex their aſſent under their hands and ſeals.

(*a*) If more than 5*l*. is given with the apprentice, this proviſo may be omitted. See 32 Geo. 3. *c*. 57. ſec. 1.

2 *The Form of an Aſſignment of the above Indenture by Indorſement.*

County of Middleſex.

Be it remembered, that the within named *Nicholas Moore*, by and with the conſent and approbation of *Andrew Sibley* and *Michael Foreſter*, two of his majeſty's juſtices of the peace for the ſaid county, whoſe names are ſubſcribed to the conſent hereunder written, doth hereby aſſign *Thomas Lackit*, the apprentice within named, unto *Nolan Bowles* of *Enfield*, in the ſaid county, to ſerve him during the reſidue of the term within mentioned, and that he the ſaid *Nolan Bowles* doth hereby agree to accept and take the ſaid *Thomas Lackit*, as an apprentice, during the reſidue of the ſaid term, and doth hereby acknowledge himſelf, his executors and adminiſtrators, to be bound by the agreements and covenants within mentioned, on the part of the ſaid *Nicholas Moore* to be done aad performed, according to the true intent and meaning thereof, purſuant to the proviſions of an act paſſed in the thirty-ſecond year of the reign of King *George* the Third, intitled, "An Act for the further regulation of Pariſh Apprentices." IN WITNESS whereof the ſaid *Nicholas Moore* and *Nolan Bowles* have hereunto ſet their hands and ſeals, this ſecond day of July, one thouſand ſeven hundred and ninety-nine.

Sealed and delivered in the preſence of
Sam. Pikes.

Nic. Moore (Seal.)
Nolan Bowles (Seal.)

To this aſſignment the juſtices muſt likewiſe ſubſcribe their aſſent under their hands and ſeals.

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3. *The Form of a Pariſh Rate for repairing the Church.*

WE the churchwardens, overſeers of the poor, and pariſhioners of the pariſh of *Wentworth*, in the county of *Stafford*, whoſe names are hereunto ſubſcribed, do hereby rate and tax all and every the inhabitants of the ſaid pariſh, hereunder mentioned, for and towards the repairs of the church of the ſame pariſh in the ſeveral ſums following, viz.

Charles Windham, for the tenement now in his occupation, ——— ——— 0 10 6

Nehemiah James, for the lands now held by him in this pariſh, ——— ——— 0 12 0

Mich. Foreſter, *Peter Sampſon*, } Churchwardens. *John Barnes*, *Wm. Fowler*, } Overſeers.

Sam. Omrod, *James Vallet*, *Robert Miller*, } Pariſhioners.

4. *The Form of an Aſſeſſment for Poor's Rates.*

A rate or aſſeſſment on the ſeveral perſons hereunder named, inhabitants of the pariſh of *St. Michael*, in the county of *Dorſet*, made and aſſeſſed this twenty-fourth day of June, one thouſand ſeven hundred and ninety-nine, by us whoſe names are hereunder written, being churchwardens and overſeers of the poor of the ſaid pariſh, (by and with the conſent of his majeſty's juſtices of the peace for the ſaid county) for and towards the neceſſary relief of the ſick and impotent, and other the poor of the ſaid pariſh, and for other the purpoſes mentioned in the ſeveral acts of parliament relating to the poor, being the *firſt* rate for the ſaid purpoſes. for the year one thouſand ſeven hundred and ninety-nine, viz.

		Wm. Manning, Gent.	0	7 6
		Joſ. Paul, Eſq.	0	10 6
		Peter Samuel,	0	2 0
		Giles Noles, Eſq.	0	12 0
James Fowler, *Wm. Payne,*	Church-wardens.	*Tho Williams,* *Ob. Johnſon.*	Overſeers.	

5. *The Conſent of the Pariſhioners to the above Rate.*

We whoſe names are underwritten being inhabitants of the pariſh of *St. Michael*, aforeſaid, have peruſed and conſidered the above aſſeſſment, and do hereby declare that the ſeveral ſums above mentioned are rated upon the reſpective perſons above named, by our approbation, and that ſuch rate is an equal rate to the beſt of our judgments.

Thomas Abrahams, *George Ireſon,*	*Jekyl Thomas,* *Iſaac Mills.*	Pariſhioners.

After which the ſaid rate is to be ſubſcribed by two juſtices of the peace.

6. *A Certificate of a Perſon's being a Pariſhioner.*

To the churchwardens and overſeers of the poor of the pariſh of *Iſlington*, in the county of *Middleſex*.

We the churchwardens and overſeers of the poor of the pariſh of *St James*, in the county of *Surry*, do hereby certify that we acknowledge *Samuel Gad*, labourer, and *Sarah* his wife, to be inhabitants, legally ſettled in our ſaid pariſh of *St. James*, and we do alſo hereby promiſe for ourſelves and ſucceſſors, to

receive them into our ſaid pariſh whenſoever they ſhall become chargeable. As witneſs our hands and ſeals, this twentieth day of April, one thouſand ſeven hundred and ninety-nine.

Signed and ſealed in the preſence of { *Dan. Cobb*, *Ol. Nile*, } Churchwardens.

Sam. Neale, *Fra. Oliver*, } of the pariſh of *St. James* { *Will. Neville*, *Tho. Webb*, } Overſeers.

After which the certificate muſt be allowed, and ſubſcribed by two juſtices.

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7. *Form of a Contract by a Perſon with the Pariſh for the Maintenance of the Poor.*

It is contracted and agreed this 28th day of Auguſt, 1798, by and with the conſent of the major part of the inhabitants of the pariſh of *Ealing*, in the county of *Kent*, (at a public meeting for that purpoſe aſſembled, upon uſual notice thereof firſt given) between *Thomas Wilſon* and *Iſaac Marlow*, churchwardens, and *John Wells* and *William Keete*, overſeers of the poor of the ſaid pariſh, of the one part, and *Henry Beale*, in the ſaid pariſh, yeoman, of the other part; that he the ſaid *Henry Beale* ſhall and will, during the ſpace of one whole year, to commence from *Michaelmas* now next enſuing, at his own proper coſts and charges, in the houſe in which he now dwelleth (*or as the caſe may be*) find, provide, and allow unto all poor people as ſhall be there brought unto him by the churchwardens, or overſeers of the poor as aforeſaid, or any of them, or by their or any of their ſucceſſors for the time being, ſufficient lodging, meat, drink, clothing, employment, and other things neceſſary for their keeping and maintenance; and that in conſideration thereof the ſaid churchwardens and overſeers of the poor, and their ſucceſſors reſpectively, ſhall pay, or cauſe to be paid to the ſaid *Henry Beale* the yearly ſum of 100*l.* in equal quarterly proportions, and the ſaid *Henry Beale* to have, moreover, and take unto himſelf, the benefit of the ſaid poor people's work, labour and ſervice during the ſaid term. In witneſs whereof the parties to theſe preſents have hereunto ſet their hands the day and year firſt above mentioned,

Tho. Wilſon, *Iſaac Marlow*, } Churchwardens.

John Wells. *Wm. Keete*. } Overſeers.

Henry Beale.

8. *Form of an Agreement between two or more Pariſhes, to unite for the purpoſe of providing a Poorhouſe, and for maintaining the Poor.*

It is agreed this thirtieth day of December, 1799, by and between *John Summers* and *Jacob Finch*, churchwardens, and *Samuel Miller* and *James Friend*, overſeers of the pariſh of *St. Ann's*, in the county of *Norfolk*, and *William Good* and *Thomas Wills*, churchwardens, and *Maynard Kent* and *Thomas Jacobs*, overſeers of the poor of the pariſh of *St. George*, in the ſame county, by and with the conſent of the major part of the pariſhioners (*or inhabitants*) of their reſpective pariſhes, at public meetings for that purpoſe duly aſſembled, and with the approbation of *James Sykes*, Eſq. one of his majeſty's juſtices of the peace, dwelling in the ſaid pariſh of *St. Ann's*, (*or near to the ſaid pariſhes of* St. Ann's and St. George, *as the caſe may be*) of the one part, and *William Sims*, of the pariſh of *St. George*, aforeſaid, yeoman, of the other part; that the ſaid reſpective pariſhes of *St. Ann's* and *St. George*, ſhall unite in purchaſing (*or in hiring or taking, as the caſe may be*) a certain houſe, ſituate at *St. George* aforeſaid, now in the occupation of him the ſaid *Wm. Sims*, for the lodging, keeping, and maintaining of the poor of the ſaid ſeveral pariſhes aforeſaid; and that he the ſaid *Wm. Sims* ſhall and will, during the ſpace of one whole year, to commence from the 1ſt day of January now next enſuing, at his own proper coſts and charges, in the ſaid houſe, find, provide, and allow, &c. (*proceeding as in the laſt.*)

John Summers, *Jacob Finch*, *Maynard Kent*, *Tho. Jacobs*, } *Sam. Miller*, *James Friend*. } *Wm. Good*, *Tho. Wills*, }

Wm. Sims.

9. *Bond to indemnify a Pariſh from Charge in reſpect of a Baſtard Child.*

Know all men by theſe preſents, that we *Joſeph Simpſon*, of &c. in the county of, &c. and *Sam. Peters*, of &c. are held and firmly bound unto *T. Kinnerd* and *W. Tooke*, overſeers of the poor of the pariſh of *Littleworth*, in the ſaid county, (in truſt for the pariſhioners of the ſaid pariſh) in 100l. of good and lawful money of *Great Britain*, to be well and truly paid to the ſaid *T. Kinnerd* and *W. Tooke*, or their certain attorney, or their executors, adminiſtrators, or aſſigns, for which payment to be ſo well and tru'y made, we bind ourſelves, and each of us jointly

and ſeverally, and our and each and every of our heirs, executors, and adminiſtrators, firmly by theſe preſents, ſealed with our ſeals, and dated the ſecond day of April, in the 30th year of the reign of our ſovereign Lord George the Third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord 1798.

Whereas *Suſan Prudiſh* in and by her voluntary examination, taken in writing, and upon oath, the 26th day of March, now laſt paſt, before *Peter Melliſh*, one of his majeſty's juſtices of the peace in and for the ſaid county of, &c. did declare herſelf to be with child, and that the ſaid child is likely to be born a baſtard, and to be chargeable to the ſaid pariſh of *Littleworth*, and that the above bounden *Joſeph Simpſon* is the father of the ſaid child; *or if it is after the birth, ſay, (omitting the word voluntary)* Did declare, that on the 13th day of January, now laſt paſt, at *Littleworth*, in the pariſh of *Littleworth*, in the ſaid county of, &c. ſhe the ſaid *Suſan Prudiſh* was delivered of a male baſtard child, which is now living, and likely to become chargeable to the ſaid pariſh of *Littleworth* and that the above bounden *Joſeph Simpſon* did get her with child of the ſaid male baſtard child.

Then proceed.

Now the condition of this obligation is ſuch, that if the above bounden *Joſeph Simpſon* and *Sam. Peters*, or either of them, their or either of their heirs, executors, or adminiſtrators, do and ſhall from time to time, and at all times hereafter, well and ſufficiently ſave, defend, and keep harmleſs, and indemnified, as well the abovementioned churchwardens and overſeers of the poor of the ſaid pariſh of *Littleworth*, and their ſucceſſors for the time being, as alſo all and ſingular the other pariſhioners and inhabitants of the ſaid pariſh of *Littleworth*, which now are or hereafter ſhall be for the time being, of, from, and againſt all and all manner of coſts, charges, taxes, rates, aſſeſſments, damages, and expences whatſoever, for or by reaſon of the birth, education, or maintenance of the ſaid child, or in any wiſe relating thereto, and of, from, and againſt all actions, ſuits, troubles, and othr charges and demands whatſoever, touching or concerning the ſame; then this preſent obligation ſhall be void and of no effect, otherwiſe to remain in full force and virtue.

Signed, ſealed, and delivered,
(having been firſt duly ſtamped) *Joſeph Simpſon* (Seal.)
in preſence of *Sam. Peters* (Seal.)
A. Bolton, of, &c.

10. *The Form of a Conſtable's Preſentment.*

The preſentment of *Tho Jenkinſon*, conſtable of the pariſh of *St. Giles in the Fields*, in the county of *Middleſex*, made at the quarter ſeſſions of the peace, held for the ſaid county, the tenth day of Auguſt, one thouſand ſeven hundred and ninety-one.

The ſaid *Tho. Jenkinſon* preſents upon oath that *Samuel Dunnage*, of the pariſh of *St. Giles*, aforeſaid, does at this time, and has for the ſpace of two months laſt paſt, kept an unlawful gaming houſe in the ſaid pariſh, in as much as that the ſaid *Samuel* has permitted ſervants and others to play at cards, dice, and other prohibited games, to the encouragement of vice, and the diſturbance of the neighbourhood there.

Thomas Jenkinſon, Conſtable.

☞ The preſentment of churchwardens, of offences, &c. to the ordinary, may be in a like form, being altered only according to the nature of the thing preſented.

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11. *Receipt of a Conſtable on receiving a Vagrant* (*a*).

I, *Andrew Sellon*, Conſtable of *Eling*, in the county of *Monmouth*, do hereby acknowledge that I have received, this fifth day of October, one thouſand ſeven hundred and ninety-nine, of and from *Daniel Collins*, conſtable of *Eveſham*, in the ſame county, *John Tyler*, a vagrant, by him the ſaid *Dan. Collins* brought hither in his way to *Penſongraſs* in the county of *Hereford*, the place of his laſt legal ſettlement, by virtue of a paſs thereto granted by *Frederic Montague*, Eſq. one of his majeſty's juſtices of the peace for the county of *Middleſex*. As witneſs my hand, the day and year above written.

Andrew Sellon.

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12. *Conſtable's Receipt for Money for paſſing a Vagrant* (*b*).

Received, this tenth day of January, one thouſand ſeven hundred and ninety-nine, of *Richard Barnes*, Eſq. high conſtable of the hundred of *Wells*, in the county of *Heriford*, the ſum of fifteen ſhillings, for conveying *John Long*, a vagrant, to the

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(*a*) This receipt to be indorſed on the paſs.

(*b*) To be indorſed on the juſtice's certificate.

town of *Hertford*, being the ſum allowed by the within certificate. As witneſs my hand the day and year above written.

Edward Moore,
Petty conſtable of *Elſard*, *Herefordſhire*.

13. *The Form of a Petition from a poor Perſon to erect a Cottage on a Waſte.*

To the worſhipful the juſtices of the peace, at the general quarter ſeſſions of the peace, holden at Guildford, in the county of Surry, on the 29th day of September, one thouſand ſeven hundred and ninety-nine.

The humble petition of *John Pearce* of the pariſh of *Fenton*, in the aforeſaid county,

Sheweth,

That whereas your petitioner being very poor and impotent, and being with his wife and family ſettled as an inhabitant of and in the ſaid pariſh of *Fenton*, and being deſtitute of an habitation hath obtained conſent of *William Manning*, Eſq. lord of the manor of *Fenton* aforeſaid, to erect and build a cottage on the common waſte, within the ſame pariſh, for the habitation of your petitioner and his ſaid family, provided an order of ſeſſions can be obtained confirming the ſame.

May your worſhips therefore be pleaſed to grant unto your petitioner the order of this court for confirming the ſaid conſent, and enabling your petitioner to ſet up a cottage for the habitation of himſelf and family on ſome convenient place on the common waſte, within the ſaid manor.

And your petitioner ſhall ever pray.

John Pearce.

The conſent of the lord of the manor muſt accompany the petition.

14. *Form of the Liſt to be returned to the Juſtices, of Perſons proper to be appointed Surveyors of the Highways.*

A Liſt of the ſeveral Perſons named for Surveyors of the Highways, for the pariſh of (*inſert the name of the pariſh, townſhip, or place*) at a meeting held at the pariſh church in the ſaid pariſh, &c. the 22d day of Sept. 1789.

A B. C. D. F. G. K. L. &c. &c.

We whoſe names are ſubſcribed, being two parts in three of the perſons aſſembled at the meeting aforeſaid, do agree in the choice of *F. G.* as a fit and proper perſon to ſerve the office

APPENDIX. of ſurveyor for the pariſh, &c. aforeſaid, and in the allowance to him of 50l. for his trouble in executing the ſame for the year enſuing, and we do recommend the ſaid *F. G.* to the juſtices for their appointment accordingly.

A. B.
C. D. } Inhabitants.
E. F. &c.

15. *Notice to Perſons contained in the above Liſt.*

Mr. *A. B.*

Take notice that you was, at a meeting held at *(inſert the name of the pariſh,* &c.) on the 22d day of September laſt, named as one of the perſons to be returned to the juſtices as fit to ſerve the office of ſurveyor for the ſaid (pariſh, &c.) for the year enſuing; and if you have any cauſe to ſhew why you ſhould not be appointed to ſerve ſuch office, you muſt make the ſame appear before the juſtices at their ſpecial ſeſſions, to be holden at *Guildford,* on the tenth day of October next.

C. D. { Conſtable, Headborough, or Tythingman, *(as the caſe may be.)*

☞ A like notice to be given to each of the perſons contained in the ſaid liſt.

16. *Form of an Agreement of Inhabitants to pay a groſs Sum, or Annual Payment, in lieu of Repairing a particular Road.*

We whoſe names are ſubſcribed, being a majority of the inhabitants of the pariſh, of, &c. aſſembled this ——— day of ——— at a veſtry or public meeting held purſuant to notice duly given for the purpoſe of conſulting about an agreement to be made concerning the repairs of part of a highway *(or turnpike road)* within the ſaid pariſh of, &c. do conſent and agree to pay the ſum of ——— *(or if an annual payment be agreed upon)* to pay annually the ſum of £ ——— to be abſolutely exonerated and diſcharged from all future repairs of the ſaid highway (or turnpike road).

A. B.
C. D. } Inhabitants.
E. F. &c.

17. *Bond from a Surveyor of the Highways to the Parish.*

I *A. B.* ſurveyor of the highways for the pariſh, (*townſhip*, &c. *as the caſe may be*) and *C. D.* of, &c. (*the ſurety*) are held and firmly bound unto *E. F.* (*churchwarden, overſeer, or principal inhabitant*) of, &c. aforeſaid, in the ſum of £——— to be paid to the ſaid *E. F.* his executors, adminiſtrators, or aſſigns; for which payment to be well and truly made, we bind ourſelves ſeverally, and each of us, our and each of our heirs, executors, and adminiſtrators, firmly by theſe preſents, dated this——day of May 1799.

Now the condition of this obligation is ſuch, that if the above bounden *A. B.* his executors, or adminiſtrators, ſhall duly and faithfully account for, apply, and pay all and every the ſum and ſums of money which ſhall come to his hands as ſurveyor of the highways for the pariſh (*townſhip*, &c. *as the caſe may be*) of, &c. according to the direction and true intent and meaning of the ſtatute made in the thirteenth year of the reign of his majeſty king George the third, entitled "An act for the amendment and preſervation of the highways," then this bond to be void, or elſe to be and remain in full force.

A. B. (Seal.)
C. D. (Seal.)

Witneſs,
G. H. of &c.

18. *Notice for holding a Veſtry, or other Public Meeting, to ſet aſide certain Times in the Year to be excuſed from Statute Duty.*

Notice is hereby given, that a veſtry, or public meeting, will be held at ——— on the ——— day of ——— next, at the hour of 11 in the forenoon, in order to conſult about the times when it will be moſt convenient for the inhabitants of this pariſh, (*or townſhip*, &c. *as the caſe may be*) to be excuſed from being called forth to perform their ſtatute duty, according to the indulgence given them by the act paſſed in the thirteenth year of the reign of his majeſty king George the Third, entitled "An act for the amendment and preſervation of the highways."

Dated this ——— day of ——— 1799.

A. B. Conſtable, (*or headborough*, &c. *as the caſe may be.*)

19. *Notice to the Surveyor, of the Times fixed by the Inhabitants for being excuſed from Statute Duty.*

To *C. D.* the ſurveyor of the highways for the pariſh of ——— in the county of ———

I, *A. B.* (*conſtable*, *headborough*, or *tythingman*, as the caſe may be) of the ſaid pariſh, &c. do hereby give you notice, that the inhabitants of the ſaid pariſh, &c. did at a veſtry or public meeting, held on the —— day of ——— laſt paſt, agree to take the benefit of the indulgence of three months, for not performing their ſtatute duty, given by the legiſlature in the act paſſed in the thirteenth year of the reign of his majeſty king George the Third, entitled "An act for the amendment and preſervation of the highways," at the times following, viz. that they ſhall not be called upon to perform ſuch duty between the —— day of ——— and the —— day of ——— (which they conſider as the *ſeed month*) nor between the —— day of ——— and the —— day of ——— (which they conſider as the *hay harveſt* month) nor between the —— day of ——— and the —— day of ——— (which they conſider as the *corn harveſt* month).

A. B.

☞ The like notice to be given to the ſurveyors of the turnpike roads, where there are any ſuch within the pariſh, &c.

---

20. *Return to the Juſtices of the Amount of a Sixpenny Aſſeſſment.*

To the juſtices aſſembled at their ſpecial ſeſſion at ——— the —— day of ——— 1799.

~~In obedience to your order I do return and certify that the laſt aſſeſſment of ſixpence in the pound for the uſe of the highway within the liberty of —— amounted to the ſum of ——.~~

~~(Or if no Aſſeſſment of Sixpence in the pound hath been made, the Form may be thus:)~~

In obedience to your order, I do return and certify that no aſſeſſment hath been made of ſixpence in the pound for the uſe of the highway within the liberty of ——— but I apprehend from the laſt information which I have been able to get, that an equal aſſeſſment of ſixpence in the pound upon all the occupiers of land, tenements, woods, tythes, and hereditaments, within the ſaid liberty, will amount to the ſum of ——.

A. B. Conſtable, &c.

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